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The Present Bankruptcy
Problem Reaches Congress

History of Bankruptcy Legislation
How the Present Law Operates
Recent Foreign Bankruptcy Laws
Causes of Business Failures
The Need for New Legislation

Symposium of Modern Views on
Bankruptcy Reform

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The Present Bankruptcy Problem Reaches Congress

Foreword

For the past ten years a movement has been in progress for reform in the national bankruptcy law. Represented in this movement are lawyers, bankers, credit associations, and public officials who feel, for one reason or another, that conditions have grown up under the operations of the law that should be corrected.

Under the direction of different groups, special studies of the operations of the law have been made.

Finally, on July 29, 1930, President Hoover announced that he had requested the Attorney General to make a thorough study of the bankruptcy law with a view to its amendment to correct existing evils.

The Attorney General assigned to the task Thomas J. Thacher, Solicitor General, and Lloyd Garrison, Special Assistant to the Attorney General, who studied the subject for more than a year.

The bankruptcy question was viewed by the Department of Justice as part of the comprehensive problem of law enforcement on which the Government has been working for several years.

On December 8, 1931, the Thacher-Garrison study was completed and a report was transmitted to the President by the Attorney General. On February 29, 1932, the President sent the report to Congress, together with the draft of a bill, strongly urging Congress to give the matter as prompt consideration as possible.

The President's recommendations regarding bankruptcy were part of a special message on the general subject of law enforcement, in which he said, in conclusion:

"Reform in judicial procedure is, for many reasons, a slow process. It is not to be brought about by any single measure. It can best be accomplished by dealing with the subject step by step, the sum of which, in the course of time, will result in definite improvement. Taken together, the proposals above outlined offer an opportunity for substantial improvement in the administration of justice. They tend to decrease the burden on the Public Treasury and upon litigants. None of them requires consequential increase in expenditures. They would reduce crime.

"In concluding, may I not say that important as these recommendations are we must all keep before us the thought that effective administration of the law in a Republic requires not only adequate and proper machinery, honest and capable officials, but above all a citizenry imbued with a spirit of respect for law."

The tentative draft of a bankruptcy reform bill prepared at the Department of Justice was promptly introduced in the Senate by Senator Daniel O. Hastings, Delaware, Republican (S. 3866), and in the House by Representative Earl C. Michener, Michigan, Republican (H. R. 9968). Each bill was referred to the Committee on the Judiciary of the house in which it was introduced.

Subcommittees of both committees were assigned to conduct hearings and it was decided, in order to save time, that the two subcommittees should sit jointly to conduct hearings.

The members of the Senate subcommittee are Senators Hastings (chairman), and Felix Hebert, Rhode Island, Republicans; and Sam G. Bratton, New Mexico, Democrat.

The members of the House subcommittee are Representatives Tom D. McKeown, Oklahoma (chairman), Malcolm C. Tarver, Georgia, and Francis B. Condon, Rhode Island, Democrats; and Richard Yates, Illinois, Earl C. Michener, Michigan, and Fiorella H. La Guardia, New York, Republicans.

On the opening day of the hearings, which began on April 12, Lloyd Garrison appeared and described in detail the provisions of the new bill. Since then the committee has met nearly every week to hold hearings, finally closing hearings for this session on June 10.

As will be noted in the Chronology beginning on the following page, it took Congress seventeen years to write the bankruptcy bill of 1898.

In that instance, however, an entirely new law was enacted since all former bankruptcy laws had long since been repealed.

The present plan calls, not for the repeal of the present law and the writing of a new one in its place, but for amendment of the existing law, and while it does not appear as the Digest goes to press, that anything will be done at the present session of Congress, efforts will doubtless be made to amend the existing law in some of its phases at the next session.

As introduced, the pending bill is unusually long, comprising 125 pages and covering in minute detail every proposed change in the existing law. It is in the nature of a tentative draft and will undoubtedly be amended in committee.

Tracing the History of Bankruptcy Legislation Since 1787

1787

The first draft of the bankruptcy provision of the Constitution of the United States is credited to Charles Cotesworth Pinckney, of South Carolina. It provided that the Congress should have the power "to establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange." At that period bankruptcy was regarded as part of the regulation of commerce and consequently, the bankruptcy provision went into Section 8 of Article I of the Constitution. Section 8 is generally referred to as the "Commerce clause" since it covers, generally, the powers of Congress to make laws regulating interstate and foreign commerce.

Thus, the bankruptcy provision appears in Article I, Sec. 8, Par. 4:

(The Congress shall have Power)—

"To establish an uniform Rule of Naturalization and uniform Laws of the subject of Bankruptcies throughout the United States."

In the discussions of the bankruptcy clause during the Constitutional Convention, Roger Sherman, of Connecticut, said that in certain cases bankruptcies were punishable by death in England and he did not want to give Congress a power by which that might be done in the United States. Gouvernor Morris, of Pennsylvania, replied that he saw no danger of such an abuse of power by the Congress. The bankruptcy clause was adopted by the convention with only Connecticut voting against it.

In commenting upon bankruptcy in the Federalist, James Madison wrote:

"The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question."

1800

Congress passed the first bankruptcy act. This act was patterned after the existing English law. It applied only to traders, merchants and brokers and was designed chiefly to assist creditors in proceeding against debtors when ordinary processes of attachment were ineffective because of concealment. Discharge was made difficult, requiring the consent in writing of two-thirds in number and value of all the creditors. The act was limited to a duration of five years.

1802

The Bankruptcy Act of 1800 was repealed, and although frequent efforts were made in Congress to pass new bankruptcy legislation, the United States was without a bankruptcy law for nearly 40 years.

1837

The panic of this year and the conditions which followed it led to many commercial failures and revived the demands for a bankruptcy law.

1841

The second Bankruptcy Act was passed by Congress. It followed the Act of 1800 in limiting involuntary bankruptcy proceedings to cases wherein a debtor put himself or his property beyond reach of his creditors. As to discharge, the act omitted the former provision requiring consent of two-thirds of the creditors, but provided that a majority of the creditors could block discharge. The debtor, however, was entitled to a jury trial, and his discharge would be granted if the jury decided he had surrendered all his property and had complied with the orders of the court. The leniency as to discharge is considered to have been due to conditions which arose out of the panic of 1837.

Features of the Act of 1841, different from all other American bankruptcy legislation, were the omission of creditors' meetings and the appointment of trustees by the courts. All other bankruptcy acts provided for the meeting of creditors and the election of trustees by the creditors. The act contained provision for voluntary bankruptcy. This provision was attacked as unconstitutional on the ground that a law which permitted voluntary bankruptcy was not a bankruptcy law but an insolvency law.

In reply, the supporters of the law cited an opinion of the Supreme Court of the United States handed down several years previously by Chief Justice John Marshall (Sturgis v. Crowninshield, 4 Wheat, 122) that a law with voluntary bankruptcy provisions was constitutional and it came to be generally accepted that the powers of Congress over the subject of bankruptcies extended to the regulation of all relations between insolvent debtors and their creditors.

1843

The Act of 1841 was repealed after a life of only 14 months.

1861

A movement for reenactment of bankruptcy legislation began in Congress and continued off and on for several years without result.

1867

A bankruptcy law was enacted by Congress after the United States had been without one for 24 years, since the repeal, in 1843, of the bankruptcy act of 1841.

The Act of 1867 abolished altogether the distinction between traders and other persons, which had been done by the Act of 1841 in so far as voluntary proceedings were concerned. Voluntary proceedings were limited to debtors who owed at least $300. No voluntary bankrupt could be granted a second discharge, regardless of the time of the first bankruptcy; unless, in the second proceeding, the creditors were paid dividends of at least 70 per cent, or unless creditors representing three-fourths of the value consented to a lesser amount.

The suspension of commercial paper by a banker, merchant or trader for a period of 14 days was declared a ground for involuntary bankruptcy. The Act of 1867 is the only American bankruptcy act in which the mere failure to pay debts was made an act of bankruptcy, although this principle had previously been adopted in England and prevails in continental bankruptcy legislation.

The requirement of creditor consent to a discharge, contained in the Act of 1800 but omitted from the Act of 1841, was revived in new form by the requirement that where dividends of less than 50 cents on the dollar were paid to creditors, the bankrupt could not receive his discharge without the consent of a majority of the creditors in number and value to accept a smaller amount.

1873

The panic of 1873 caused agitation for a change in the bankruptcy laws. On December 1, in a message to Congress, President Grant recommended modification of the provisions relating to involuntary bankruptcies.

1874

The involuntary clause of the act of 1867 was amended by Congress so as to make suspension for nonpayment of commercial paper for 40 days, instead of 14 days, an act of bankruptcy. Involuntary proceedings were softened by abolishing the 50 per cent dividend requirement for discharge. The requirement was retained as to voluntary proceedings with the provision requiring a dividend of at least 30 per cent, unless with the consent of one-fourth of the creditors holding one-third in amount of the claims.

The existing law was also modified in the interest of the debtors by the incorporation, for the first time in American law of a provision for "compositions," or agreements by which debtors could agree with their creditors to settle for a percentage of the debt, each creditor to receive the same percentage of the money owed him. If the creditors refused composition, the debtor was to be "proceeded with as a bankrupt."

Several amendments were adopted dealing with the administrative provisions of the existing law, notably those giving power to judges to approve trustees in bankruptcy elected by the creditors and to appoint additional trustees, which power had been abused in some districts, and those providing an elaborate fee system for referees. So much confusion had resulted that an outcry against the fee system had arisen. Congress cut the fees in half and in other ways sought to clear up the confusion. Pressure continued, however, and in this year the House voted to repeal the entire law.

1876

The House again voted for repeal of the existing law, this time unanimously, but the repeal bill did not pass the Senate.

1878

Congress passed an Act repealing the bankrupcy laws, the vote in both houses overwhelmingly in favor of repeal. The repeal act became effective September 1, 1878.

1881

Senator Hoar, of Massachusetts, introduced in Congress a bankruptcy bill which had been prepared by Judge Lowell, of Massachusetts, at the request of the Boston Merchants' Association and which had been approved by a national convention of business organizations.

1884

The Hoar bill passed the Senate. It was debated in the House, but did not come to a vote.

1886

The Hoar bill again passed the Senate, but was killed in the House by a filibuster.

1889

The continued opposition to the Hoar bill, led by Senator Ingalls, of Kansas, resulted in the calling of a convention of the business interests of the country, which met in St. Louis on February 28, 1889, to urge the passage of the bill. The convention elected as its president Col. Jay L. Torrey, an attorney of St. Louis, to lead a campaign for the passage of bankruptcy law. Finding it impossible to obtain the passage of the original Hoar bill, as drafted by Judge Lowell, the proponents of a bankruptcy bill had Colonel Torrey draft a new bill.

1890-1898

The bill as drafted by Colonel Torrey was introduced in both branches of Congress and passed the House in 1890, 1895 and 1898. In 1897 the Senate passed a bill drafted and introduced by Senator Knute Nelson, of Minnesota. The Nelson bill was amended in the House Committee on the Judiciary and the bill, as amended, was accepted by both the House and the Senate, and signed by President McKinley, July 1, 1898.

1921

Increase in the number of bankruptcies throughout the United States became noticeable and led to agitation by business men and lawyers for reforms.

1926

Bills were introduced in the House by Representatives Michener, Sears and Andresen and in the Senate by Senator Walsh, Montana, amending the bankruptcy law. The Walsh-Michener bill was passed and signed by President Coolidge, May 26.

1929

An investigation of bankruptcy administration in the Southern District of New York was made by the bar associations of New York City and the Bronx. A full report was filed by Col. William J. Donovan.

1930

On July 28 President Hoover announced he had directed the Attorney General to make an exhaustive study of the bankruptcy problem. This task the Attorney General turned over to the Solicitor General Thomas D. Thatcher and Lloyd K. Garrison, special assistant to the Attorney General.

1931

On October 1 Mr. Thacher and Mr. Garrison made a preliminary report to the judicial conference, which was approved.

On December 8 the Attorney General transmitted a complete report of the Thacher-Garrison investigation to the President.

1932

On February 29 the President transmitted to Congress the Thacker-Garrison report with the draft of a bill approved by the Attorney General to put into operation the recommendations of the report which was promptly introduced in both branches of Congress. (For developments following the President's message to Congress, see Foreword.)

How The American Bankruptcy Law Operates

by Professor Samuel C. Duberstein

UNDER our Constitution we have a uniform system of bankruptcy jurisprudence which governs transactions all over the country. It is the same law in the State of Maine and in the State of Texas, the same in Washington and the same in Florida. It is uniform throughout the United States of America and her territories. It operates alike everywhere.

The United States District Courts in the forty-eight States of our Union, the Supreme Court of the District of Columbia, the District Courts of the several territories, and the United States Court in the District of Alaska, have been constituted Courts of Bankruptcy.

The enormous losses sustained by business men throughout the breadth and length of our land compelled them to seek the enactment of Federal legislation to reduce these losses,—to grant them, as creditors, efficient and wholesome remedies for the recovery of a debtor's assets, and also to place on the shoulders of the bankrupt debtor certain definite responsibilities before the United States Courts would relieve him of his debts.

Bankruptcy, as is commonly accepted today, is the Federal system of jurisprudence created by the enactments of Congress by which a debtor's assets are recovered and taken into custody; and by which an equitable distribution of these assets is made amongst the creditors on a pro rata basis; and in the event that the bankrupt debtor has surrendered all his assets and had committed no fraud, then to grant the bankrupt a discharge of his debts.

It has been said that the provision of Bankruptcy Law relating to discharge finds its origin in the Bible—the Old Testament—where we read in Chapter 13, Verses 1 and 2, of Deuteronomy:

"At the end of every seven years, thou shalt make a release. And this is the manner of the release: Every creditor that lendeth ought unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the Lord's release."

However, whether or not this is the basis for the discharge feature of the Bankruptcy Law, the fact remains that a bankrupt is granted a discharge from his debts—but only after he has surrendered all his assets and complied with the provisions of the Bankruptcy Law which require him to be examined concerning his acts, conduct and property, and to assist creditors in the recovery of all his property preferentially or fraudulently transferred, and in the collection of his outstanding accounts.

Creditors must realize that bankruptcies or failures are due in a large measure to a debtor's business incompetence, also to the careless extension of credit granted a debtor, and also to poor financing, and not always due to the debtor's crookedness. The desire to sell merchandise regardless of the debtor's real needs creates a surplus stock; the debtor sells at or below cost with the same large overhead—a stagnant condition ensues—then the failure.

There is a popular misconception that bankrupts are all crooked. That is not true. To a great extent bankrupts are largely incompetent. They should be working for someone else instead of conducting their own business.

There are two kinds of bankruptcy proceedings—the voluntary and the involuntary.

Today, any person, partnership, or corporation, except municipal, banking, insurance and railroad corporations, may become a voluntary bankrupt on his or its own petition.

An involuntary proceeding may be instituted against any natural person (except a farmer or a wage-earner)—against any business, commercial or moneyed corporation (except banking, municipal, railroad and insurance corporations), and against any unincorporated company, such as a partnership, owing debts to the amount of $1,000.00 or more.

In both the voluntary and the involuntary proceedings, a bankrupt debtor may apply and obtain a discharge releasing him of his debts, provided he has surrendered to his creditors all his property, assets and effects, and has not committed any fraud.

Petitions in bankruptcy are filed in the United States District Court, presided over by United States District Judges, who are appointed for life by the President.

Assisting the United States District Judges in the judicial administration of bankruptcy proceedings are the Referees in Bankruptcy, who are appointed for a two-year term by the United States Judges.

Statistics prove without a doubt that the cost of administering a bankrupt estate through the medium of the United States Court is less than the cost of administering insolvency proceedings in the State Courts. The fees of the Referee in Bankruptcy, the Receiver, the Trustee, and the Marshal, are expressly limited by the Bankruptcy Statute, and under Section 72 of the Bankruptcy Act "neither the Referee, Receiver, Marshal, nor the Trustee shall in any form or guise receive, nor shall the Court allow him, any other or further compensation for his services than that expressly authorized and prescribed in the Bankruptcy Act."

The Judges and Referees in Bankruptcy exercise great caution in passing on allowances. Bear in mind that creditors receive a ten-day notice of all hearings on the accounts of Receivers and Trustees and on the allowances of fees and commissions, and the creditors may voice their opinion or objection as to the amount of the allowance to be made, and such expression is given due consideration by the Court.

The average cost of administering a bankrupt estate, including fees and disbursements of the attorneys, Receiver, Trustee, and Referee, does not amount to more than ten per cent of the amount collected.

It should also be noted that the Bankruptcy Law gives the fullest protection to creditors in the prosecution of

their rights. By instituting bankruptcy, creditors immediately set in operation the machinery of our Government to take immediate possession of the bankrupt's assets, to stay Sheriffs' sales, to prevent unlawful preferences and to set aside fraudulent transfers and to summarily recover concealed assets. They may also invoke the aid of the United States Attorney in the prosecution of any criminal acts committed by a bankrupt and his associates.

Furthermore, creditors have the unquestioned right to select their own Trustee, who takes title to all of the bankrupt's assets, and who is charged with the duty of administering the estate and handling the funds. Creditors are always apprised of all important steps taken in the bankruptcy proceedings. No sale of assets can take place without at least ten days' notice to all creditors. No first meeting of creditors, at which the bankrupt must submit himself to an examination, can take place without at least ten days' notice to creditors. No compromise of any claim that the Trustee may have against anyone can take place without at least ten days' notice of a meeting to consider and act on such compromise. No hearing on a bankrupt's application for discharge can take place without at least thirty days' notice to the creditors. All creditors are entitled to examine the bankrupt, his records, books and papers.

While, generally speaking, a majority in number and amount of the creditors may approve of a settlement, the bankruptcy law affords any creditor, no matter how small his claim, the right to object to any settlement, and if he can prove that the bankrupt has committed a fraud, or that the proposed settlement is not for the best interests of the creditors the Court will refuse to confirm the proposed composition.

All hearings before the District Judge and Referee in Bankruptcy are public and at all times creditors are invited to attend.

While sometimes it may be difficult to prevent crooked business sharps from obtaining credit on false financial statements, or to compel complete restitution of concealed assets, yet the administration of a bankrupt estate, dealing as it does with involved and often intricate business problems, in the hands of honest and competent attorneys with a thorough knowledge of the Bankruptcy Law and accountancy, should result in minimizing losses sustained by merchant creditors and cause the commercial swindlers to be prosecuted and sent to jail.

A careful study of the subject of Bankruptcy should be made by the merchant, accountant, law student and the practicing attorney in order to make effective this legislation, for it is apparent that by an intelligent and honest application and enforcement of the provisions of the Bankruptcy Law, the rights of creditors can be safeguarded, and the recovery of property preferentially transferred or fraudulently concealed can be obtained.

The Bankruptcy statute, although a creation of the human mind, provides a well-nigh perfect system of jurisprudence by which the rights of creditors are zealously protected, and the honest bankrupt can avail himself of this kindly, humane, benevolent legislation and obtain a discharge from the payment of his debts, thereby obtaining a new lease of business life.

On January 28, 1928, there appeared in the newspapers the story about a Jacob B. Gordon, a retail jeweler, who went into bankruptcy in 1914 and whose creditors received only sixteen cents on the dollar. Gordon had since then prospered in business in Boston, and although legally freed of his debts and under no legal obligation to do so, Gordon paid off all of the creditors' claims in full and with interest besides.

Later we read in the newspapers that Reuben H. Donnelly, a well-known printer, had been associated in 1905 with a company which failed for more than $300,000.00, and the creditors received 27 per cent. But, although legally freed of his debts, Donnelly was not satisfied that he was morally freed, and on New Year's Day he paid off all the creditors' claims in full and also added interest which amounted to another $300,000.00.

These and other similar instances recorded in the newspapers indicate that the ethical standards in the business world are being elevated, and that these men were prompted by a high sense of honor and integrity.

Creditors are considerably aroused and agitated when occasionally a crooked debtor seemingly has an alleged "successful" failure, by which creditors cannot recover concealed or hidden assets. But we have it on good authority that there is no real gain in such a case. The Bible asks, "What shall it profit a man if he gain the whole world and lose his own soul?" The concealment of assets by a bankrupt means no true benefit to him. Not alone is the bankrupt subject to the accounting he must give his own conscience, but in our Bankruptcy Courts he is subject to vigorous and rigid examinations as to his acts, conduct and property, and he is required to account fully and completely for all property and moneys received by him, and his failure to do so renders him liable to criminal prosecution.

We must not lose faith in the inherent honesty of the merchant, even though the crooked business bird of prey puts in a spasmodic appearance. The provision for a bankrupt's discharge of his debts evidences the faith that our representatives in Congress, aye—the people of this country—have in the unfortunate, heavy-laden debtor.

The Bankruptcy Law, with its beneficent purposes, is a great humanitarian document. It is a progressive movement towards a more ideal standard of business association; it is the realization of higher form of justice, justice tempered with true mercy; it bespeaks mutual helpfulness and demonstrates the practice of the Golden Rule—all of which manifest an expression of the great truth, "Love is the fulfilling of the law."—*Extracts, see 1, p. 192.*

Recent Changes in Foreign Bankruptcy Laws

by Henning Holm Nielsen

The inability of individuals to pay their debts is closely related to the general state of credit, trade and industry. This was apparent during the disturbed years following the war. In England, for example, the average number of bankruptcies during the period 1909-1913 was 3,726 and during the period 1914-1918, 1,704. In 1919, the total number of insolvencies (bankruptcies, compositions and deeds of arrangement) was only 910. In 1920, there was a change in the trend of the movement: the total number of insolvencies was 2,016. In 1921, the figure rose to 4,840, and to 6,580 in 1922. At the same time assets were decreasing and liabilities increasing.

The same tendencies were apparent in many other countries; there was a decrease in dividends, and owing to insufficient assets bankruptcies without dividend became more and more frequent. This explains the general dissatisfaction with existing bankruptcy laws which became apparent everywhere during the first ten years after the war. It is alleged that the laws no longer correspond to present economic requirements and that the manner in which bankruptcy proceedings are conducted is archaic and needs reforming.

In point of fact such reform is being carried out in most European countries, if it has not already been done. In view of the great importance of these laws to business, a brief account of the development of the laws governing bankruptcy and compositions will doubtless be of interest to all business men who do business abroad.

In England the Bankruptcy Act of 1914 was amended in 1926, more particularly at the request of the Chambers of Commerce. Penalties for offenses connected with bankruptcies were made more severe. In Germany a law on deeds of arrangement had to be passed in 1927, the bankruptcy law of 1877 being inadequate in a large number of cases of insolvency, as for instance, when the debtor could be saved from bankruptcy. The Chambers of Commerce are urging further revision and unofficial efforts are preparing the way for a unification of the German and Austrian laws in this domain. In Hungary a new law on bankruptcy and composition has been drafted, while in Switzerland it is in the stage of preliminary discussion. In Italy the need for a revision of the existing law was so urgent that whereas the whole new commercial code is still in draft, it has proved necessary to pass the section relating to bankruptcy into law already.

The situation was particularly serious in the Succession States owing to the necessity of establishing uniform legislation in each country. Czechoslovakia* and Poland are working on this legislation. A new law on bankruptcy and composition was passed in Jugoslavia in 1930. In Roumania, the law on composition also dates from 1930, while a new bankruptcy law exists in the form of a draft of the Consiliul Legislativ. In Greece the Commercial Code Drafting Committee has drawn up a Bankruptcy Bill in which it has not been deemed necessary to include judicial liquidation. Turkey has adopted the Swiss law on debt and bankruptcy proceedings, which, however, has given rise to certain difficulties. Needless to say, all legislation in this domain has been completely changed in Russia. As to the Scandinavian countries, Sweden and Norway passed new laws relating to bankruptcy and composition in 1921 and 1930 respectively. The revision of the law has been discussed in Finland ever since 1926, and in the autumn of 1930, Mr. Zahle, Minister of Justice in Denmark, set up a Commission to examine the complaints of the business world.

In this way the old laws are being abolished in all countries except, perhaps in England and France, where it is considered sufficient to reform such sections of the law as have not worked well in practice such as, in the case of France, Article 576 of the Commercial Code in regard to the seller who does not receive payment.

In many countries the point of departure in bankruptcy operations is the administration by officials of the State. This, however, had given rise to much dissatisfaction among traders. Such officials had no personal interest in making the administration prompt, efficient and economical, and moreover, they did not possess the requisite commercial knowledge. In this way the "autonomy of creditors" came to be recognized, creditors being allowed to take part in bankruptcy operations according to methods which varied in the different countries, but usually acting through a Committee of Inspection and through a trustee appointed by them. For some time past, however, complaints have been heard on all sides with regard to this autonomy of creditors, even from the creditors themselves, particularly the business men. This may appear rather strange, for after all the creditors have the right to administer the bankruptcy proceedings as they see fit. In order to understand this situation, it is necessary to examine the results obtained in the various countries.

In France, at the beginning of the 19th century, the autonomy of creditors was assured by the Commercial Code of 1807; the Syndic or trustee was appointed by and from among the creditors. This system, however, was not successful from a practical point of view, since the creditors very often having neither the time nor the necessary experience to take charge of the proceedings, entrusted them to professional agents who paid more attention to their own interests than to those of the creditors. Consequently, the autonomy of creditors was abolished in France in 1838. The Syndic is now appointed by the Tribunal de Commerce; in Paris, he is chosen from among the members of the Corporation of Syndics and Judicial Liquidators attached to the Tribunal de Commerce de la Seine, who are specialists in such matters.

In England, advantage has not been taken of the experience gained in France. It was believed that administrative defects would be remedied by introducing this same autonomy of creditors (Bankruptcy Act 1861)

*After this was written, the new Czechoslovakian Bankruptcy and Composition Act was passed and came into operation on August 1st, 1931.

which had failed in France and been abolished more than twenty years earlier. Formerly, bankruptcies were administered by "Official assignees;" now they were to be conducted by the "creditors' trustees," appointed by the creditors. Moreover, the Bankruptcy Act of 1869 introduced the system of "committees of inspection," the members of which are appointed by and from among the creditors. These latter Acts, however, were also found to be impracticable, principally owing to the considerable delay and expense which were almost always involved and which arose from the same abuses as in France. Intermediaries who made a business of such matters collected the proxies and being thus vested with full authority to act in relation to the bankruptcy proceedings, appointed themselves trustees or members of the committee of inspection. Very frequently bankruptcies and liquidations were conducted entirely at the discretion of one individual, owing to the inertia of the general body of creditors who took no steps to safeguard their own interests. The same applied to compositions; many unfair compositions were imposed on creditors. For these reasons, the Bankruptcy Act of 1883 to a certain degree re-established the official administration of bankruptcy. The creditors retain the right to appoint a trustee, but the appointment may be rejected by the Board of Trade whose officers (official receivers), together with the officers of the courts (registrars), play a very important role in the administration of bankruptcies. Numerous restrictions have also been established with regard to form of authority and in principle only special proxies are recognized. The Bankruptcy Acts of 1914 and 1926 maintain these principles.

In Germany, bankruptcy legislation is based both on official administration, an official receiver being appointed by the court of first instance, and on the autonomy of creditors who may appoint a committee of inspection. It is this last fact that gives rise to abuses. The professional agents collect proxies and appoint themselves members of the committee; these members receive a fee. Abuses are still more flagrant in the case of the Vergleichordnung. Agents, and hence sometimes the debtors themselves, are too often the masters of the situation. In Austria, similar abuses already led to a revision of the Bankruptcy Act in 1914.

The situation is the same in the northern countries. In Sweden, the autonomy of creditors was abolished in 1921, and in Norway in 1930, owing to the manner in which proxies were collected. The authors of the older laws believed that the creditors would take an interest in the proceedings; this, however, did not prove to be the case. In Finland, the system of the autonomy of creditors has led to third persons offering their services to the creditors, the latter taking very little active part in the proceedings because of the considerable expense and loss of time involved. It is true also of Denmark. And it is this fact which gives rise to the problem: It is no use reproaching the creditors for their lack of energy, since the interest of the individual creditor in a particular bankruptcy is too slight to make it worth his while to make any greater efforts.

The present situation is very unfortunate. If in practice the system of the autonomy of creditors cannot be realized, the question of improving bankruptcy administration seems hopeless. For it is a fact that "autonomy of creditors" was substituted for "officialism" (that is to say administration by officials) precisely because this system was not satisfactory. Even to-day, in countries where "officialism" has been re-established, it is unsatisfactory and reforms are being demanded, as for example in Germany.

This then is the great problem of bankruptcy law: Is it inevitable that the administration of bankruptcies should be perpetually moving from a system of official administration to one of creditors' autonomy and vice versa, when both systems are really defective? Officialism is unsatisfactory, because it hands over the administration to officials who are often incompetent in commercial matters and sometimes lack the necessary zeal to ensure the proceedings being conducted expeditiously, efficiently and at a minimum cost. But administration by creditors is no more satisfactory. It is true theoretically that power is vested in the general body of creditors, but what takes place in practice is that the creditors delegate their powers by giving proxies to professional intermediaries who make a business of such matters.

Nevertheless "autonomy of creditors" is in itself a sound principle of administration. Control should be vested in those who are directly interested in the matter, because it is to their own advantage to avoid delay in administration and to reduce expenses. The weakness in the position arises from the way in which this principle has been applied, due to the fact that whenever a bankruptcy occurs it is difficult for the creditors in question to organize themselves and as a body carry out the work of liquidation in a satisfactory manner. As has already been said, the interest of each *individual* creditor in the matter is too small.

While the old autonomy of creditors is being abolished by law, there is developing at the same time a *real* autonomy of creditors in the modern sense of the word, i.e. action on the part of organized industrial and commercial groups, such as Chambers of Commerce and creditors' syndicates, which bring their influence to bear on the administration of bankruptcy, composition and compulsory liquidations. Sometimes these groups are the general industrial and commercial organizations, as for example in Germany, where the Chambers of Commerce exercise their influence in the appointment of the receiver and where any composition proposed has first to be submitted to them. In Sweden, there exist the "Köpmannaföreninger" (Traders' Associations) who employ traveling inspectors.

Sometimes, more especially in Anglo-Saxon countries, these groups are specific associations of creditors. In England co-operation of creditors plays a fairly important role. The first trade protection societies, which concern themselves with credit information, collection of debts, and representation of creditors in cases of bankruptcy, etc., were formed a hundred years ago. The most important of these societies, about 70, with a membership of 50,000, are affiliated to the National Association of Trade Protection Societies, founded in 1850. To show the importance of this Association, it will suffice to mention that its former presidents include the late Earl of Birkenhead, Lord High Chancellor of England. Further, various industries have set up organizations of their own, such as the Textile Trades' Association for the Prevention of Fraudulent Trading, to safeguard the interests of their members, represent them in bankruptcy proceedings and sue fraudulent debtors.

In the United States, the National Association of Credit Men, which exercises similar functions, has offices throughout the country. On the Continent there is, in

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An Analysis of the Causes of Business Failures

The Bureau of Foreign and Domestic Commerce of the Department of Commerce is making a study of the causes of bankruptcies and business failures. The following report of investigations in New Jersey is the first of a series it has in preparation.

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1. Six hundred and twelve cases of bankruptcy and other failures in New Jersey were included in the study forming the basis of this report. Of this number, 487 were business establishments and 125 were wage earners and professional men. Included in the business group were 102 contractors, 8 farmers, 28 manufacturers, 33 real-estate dealers, 301 retailers, and 15 wholesalers.

2. An analysis of the material that was gathered concerning the businesses which failed indicated that poor business methods and practices should be given first place as a cause of failure. Of the total number of businesses studied, 23.5 per cent kept no books, 29.4 per cent kept inadequate books, and 39 per cent never took an inventory. The poor credit methods of the businesses which failed are evidenced by the large losses from bad debts, the trouble experienced in collecting accounts, the unusually large proportion of business done on a credit basis, and the small proportion of concerns using credit bureaus as an aid in carrying on their credit business. The average bad-debt loss on open credit extended to customers for the year preceding failure by those concerns which did a credit business and which were able to furnish figures was 7.2 per cent. The average loss on installment credit was 17.1 per cent.

3. In examining the statements of those who failed regarding the causes of failure it was found that business depression and unemployment were mentioned more frequently than any other causal factor. The creditors mentioned this fact less frequently than the debtors. An analysis of the data seems to indicate that business depression was the occasion rather than the cause in many, if not in most, of these cases. The real cause was the inefficient business practices of the one who failed. Having kept no books, never taken an inventory, extending credit unwisely, and engaged in other practices not consistent with the commonly accepted principles of sound business, when adverse conditions came he failed, while his more efficient competitor was able to weather the storm. Likewise, speculation in connection with the business and speculation outside the business were the real causes of some of these failures, although the debtors attributed failure to business depression and did not mention the unwise speculation.

4. Of the 487 cases of business failure included in the study, 68, or 13.9 per cent, were attributed by the debtor or at least one of his creditors to a slump in the value of real estate. The decline in real-estate values, the effects of which were probably at their worst during the period of the study, had been preceded by a boom in real-estate and construction activities. During the period of unusual business activity, characterized by large speculative profits, great numbers of persons without the training and other requisites for success were drawn into the real-estate and construction business. The margin of assets of the speculative real-estate dealers and contractors was small, and when real estate declined in value they were insolvent and sought relief in the bankrupt courts.

5. Of the 487 cases of business failure included in the study, there were 60, or 12.3 per cent of the total, in which at least one creditor mentioned dishonesty or fraud as a cause. Dishonesty entered the cases in various forms. Most frequently it was the dishonesty of the bankrupt that was mentioned, but sometimes it was that of his partner, his lawyer, or one of his creditors, or a combination of these working together to gain at the expense of others. Cases have been presented to illustrate the various types of dishonesty or fraud that were encountered.

6. Speculation outside business, also gambling, illness, personal extravagance, overhead expenses too great for the volume of business, poor location, and indorsing notes for others are factors found in a substantial number of cases.

7. Competition and lack of capital, which are frequently said to account for more failures than other causes, were not found to occupy important place in this study. In many of the cases where the failure was attributed to competition, the real cause was one or more of those mentioned above. Likewise, in most cases where failure was attributed to lack of capital something else was the cause. The owners had received generous extensions of credit, the proceeds from which had been used up gradually through the lack of proper management; they then lacked capital, it is true, but this condition was a result of failure rather than a cause of it.

8. Who financed these businesses which ended in failure? Who set them up in business? Who kept them going? In answering these questions, it was concluded that for the greater part they set themselves up in business. Also, that they were kept in business and permitted to grow, at least in the size of their debts, by their creditors, particularly the wholesalers, jobbers, and manufacturers.

9. The information gathered on wage earners and professional persons shows that in 32, or 25.6 per cent of the 125 cases studied, bankruptcy was resorted to in order to avoid the payment of judgments. The analysis of these judgment cases discloses a series of facts which are perhaps of considerable significance. First, approximately two-thirds of the cases were brought about by automobile accidents. Second, in a large proportion, judgments were the only cause of bankruptcy. Third, of the 36 cases for the whole study in which judgments entered, 32 (88.8 per cent) were those of wage earners and in only 4 (11.2 per cent) were the principals professional men.

10. Indorsing notes for others, unemployment, dishonesty, extravagance or living beyond one's means, illness, decline in real-estate values, and stock-market speculation were other factors found to be present in the bankruptcy of wage earners and professional persons.—*Extracts, see 3, p. 132.*

The Need for New Bankruptcy Legislation

As Reported by the U. S. Attorney General

FOLLOWING the President's announcement of July 29, 1930, authorizing the Attorney General to undertake an exhaustive investigation into the whole question of bankruptcy law and practice, steps were taken to gather all available data bearing upon the operation of the law and the administration of estates thereunder. Statistical reports on every phase of bankruptcy were procured from approximately two-thirds of all the referees in bankruptcy. The clerks' dockets and statistical records of all bankruptcy cases closed during the fiscal year ending June 30, 1930, were analyzed in detail.

Complaints of abuses in administration were investigated, the history of the law and the provisions of foreign bankruptcy laws were studied and first-hand observations made of the actual processes of administration in 21 cities of 16 different States fairly representative of conditions throughout the United States.

Much information disclosing the actual experience of those affected by the law was obtained, with the aid of wholesale and retail trade associations, of other business and banking organizations, of bar associations, and of numerous individuals throughout the United States, to all of whom our thanks are extended.

Acknowledgment should particularly be made to the hundreds of referees who generously coöperated in the filling out of statistical forms and in furnishing other information; to the conference committee of the National Association of Referees in Bankruptcy, which assisted in the preparation of these forms and in other ways; to representatives of the United States Chamber of Commerce, the National Association of Credit Men, the National Retail Credit Association, the National Association of Manufacturers, and the American Bankers Association, who helped to shape the fact-finding program; to the many local units affiliated with these associations, who supplied much information from court records and otherwise; to the clerks of the district courts, who furnished data from their dockets; to the 2,000 or more business houses, banking institutions, and attorneys, who answered questionnaires and volunteered information and advice on many matters; to R. G. Dun & Co., which assembled at its own cost statistical data on liquidations outside of bankruptcy; to the Russell Sage Foundation, whose department of remedial loans furnished data on wage-earner bankruptcies; and to the committees of the American Bar Association, the Commercial Law League of America, and the various national associations named above, who offered advice concerning amendments to the law.

The demand for a strong and uniform national bankruptcy act arose within a few years after repeal of the act of 1867, continued with increasing intensity, and resulted in adoption of the present act in 1898. Its adoption was hastened by the financial stress of debtors following the depression of 1893.

Although the purposes of the law were not novel, the chief provisions which were designed to carry these purposes into effect differed radically from the earlier bankruptcy laws of this country and from the laws of all other countries.

These differences were chiefly as follows:

1. The power of creditors to file bankruptcy petitions against their debtors was drastically circumscribed; the acts of bankruptcy were more limited in scope and in number than under the 1867 law, and, except where the debtor had fraudulently transferred or concealed property, or had admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt, the creditors were required to show that at the time he committed an act of bankruptcy his assets were not at a fair valuation equal to his debts. Thus the acts of bankruptcy were not only narrowed, but a new and hitherto unknown definition of insolvency was adopted. By contrast, under the English and Canadian and most, if not all, of the other European laws, a debtor may be forced into bankruptcy for failure to pay his obligations as they fall due, and even under the Act of 1867 a banker, merchant, or trader who failed to pay his commercial paper within a short period after maturity could be put into bankruptcy on that ground alone.

2. The criminal provisions were similarly limited, and the grounds upon which a discharge could be denied were, as will presently be shown, so radically reduced in number as to guarantee every debtor a full discharge from his debts in the absence of proof that he had committed a criminal offense or had fraudulently and in contemplation of bankruptcy destroyed or failed to keep books of account. Such provisions, even as subsequently amended, are today unique in the civilized world in the extent to which they permit debtors to avoid their obligations.

3. The purely administrative provisions of the present act were constructed on the theory—possibly justified under the conditions of trade during the years prior to 1898, when the act took shape—that only the creditors are concerned in the administration of the estate, the examination of the debtor and his discharge and can be relied on to meet together, elect competent trustees, and determine problems of administration, and that in cases involving fraud they will be active in detecting and establishing the facts, and at their own expense will protect the public interest.

Thus, though carefully drawn and thoroughly considered, the Act of 1898 was altogether a novel experiment in bankruptcy legislation, and under the stress of greatly changed social and economic conditions it has had quite unforeseen consequences, the most serious of which have resulted from the failure of the theory that the creditors can be relied on to take charge of the management and enforcement of the act.

The growing importance of the bankruptcy act in the face of this increasing resort to it by debtors led in the last decade to a number of studies and inquiries by com-

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President Hoover Recommends Bankruptcy Legislation

From Special Message to Congress on Law Enforcement Legislation, February 29, 1932

The Federal Government is charged under the Constitution with the responsibility of providing the country with an adequate system for the administration of bankrupt estates. The importance of such a system to the business life of the community is apparent. The number of cases in bankruptcy has steadily increased from 23,000 in the fiscal year 1921 to 53,000 in 1928 and to 65,000 in 1931. The liabilities involved have increased from $171,000,000 in 1921 to $830,000,000 in 1928 and $1,008,000,000 in 1931. The increases are, therefore, obviously not due to the economic situation, but to deeper causes.

A sound bankruptcy system should operate—

First, to relieve honest but unfortunate debtors of an overwhelming burden of debt;

Second, to effect a prompt and economical liquidation and distribution of insolvent estates; and

Third, to discourage fraud and needless waste of assets by withholding relief from debtors in proper cases.

For some time the prevailing opinion has been that our present bankruptcy act has failed in its purpose and needs thorough revision. During the past year the Department of Justice, with my approval, has conducted an investigation into the administration of bankrupt estates in the Federal courts. Nation-wide in its scope, the inquiry has involved intensive study of the practical operation of the bankruptcy act under varying local conditions throughout the United States. Court records and special reports of referees have been analyzed. Organizations of business men and lawyers have assisted in gathering information not available through official channels. Judges, prosecuting officers, referees, merchants, bankers, and others have made available their experience. Data gathered by the Department of Commerce relating to causes of failure and the effect of bad debts upon business has been studied. The history of bankruptcy legislation and administration in this country, and in Great Britain, Canada, and other countries, has been reviewed.

The inquiry has now been completed. Its result is embodied in a report which is transmitted herewith for the consideration of the Congress. Thorough and exhaustive in detail, it presents the information necessary to enable the Congress to determine the faults in the present law and to devise their cure.

The present bankruptcy act is defective in that it holds out every inducement for waste of assets long after business failure has become inevitable. It permits exploitation of its own process and wasteful administration by those who are neither truly representative of the creditor nor the bankrupt.

Except in rare cases it results in the grant of a full discharge of all debts without sufficient inquiry as to the conduct of the bankrupt or of the causes of failure. It discharges from their debts large numbers of persons who might have paid without hardship had the law discriminated between those overwhelmed by misfortune and those needing only temporary relief and the opportunity to deal fairly with their creditors.

The bankruptcy act should be amended to provide remedial processes in voluntary proceedings under which debtors, unable to pay their debts in due course, may have the protection of the court without being adjudged bankrupt, for the purpose of composing or extending the maturity of their debts, of amortizing the payment of their debts out of future earnings, of procuring the liquidation of their property under voluntary assignment to a trustee; or, in the case of corporations, for the purpose of reorganization.

The act should be amended to require the examination of every bankrupt by a responsible official and a full disclosure of the cause of his failure and of his conduct in connection therewith for the consideration of the court in determining whether he should have his discharge.

The discretion of the courts in granting or refusing discharges should be broadened, and they should be authorized to postpone discharges for a time and require bankrupts, during the period of suspension, to make some satisfaction out of after-acquired property as a condition to the granting of a full discharge.

The choice of the liquidating personnel should be limited to competent individuals or organizations after careful consideration by the courts of their qualifications and ability to maintain an efficient and permanent staff for the conduct of the business. Compensation for such services should be upon a scale which will attract trained business organizations. Competent officials should be continuously charged with the observance of the administration of the law and with the duty to suggest to the courts and to Congress methods for its improvement. The present statute is susceptible of improvement to eliminate delay in its cumbersome processes, much of which results from a confusion of judicial and business functions.

The inquiry has not stopped with the collection of information and an expression of general conclusions. Its results have been embodied by the Attorney General in a bill for revision of the present bankruptcy act in order to present the proposals in concrete form.

I earnestly commend them to your consideration.

Purposes of the Bankruptcy Bill Now Before Congress

We have seen that the bankruptcy act has failed to achieve its primary purpose of providing a medium for the ratable distribution of the assets of insolvent debtors because ordinarily these assets are largely consumed or dissipated before the estate is brought into bankruptcy. Instead of affording relief to debtors before their affairs have been completely ruined in financial failure, the act insists upon liquidation or a cumbersome process of composition and no practical method is provided for saving debtors from ruin without branding them as bankrupts.

We have concluded, therefore, that the act should be amended so as to provide remedial process in voluntary proceedings under which debtors, unable to pay their debts in due course, may have the protection of the court, without being adjudged bankrupt, for the purpose of composing or extending the maturity of their debts, amortizing the payment of their debts out of future earnings, procuring the liquidation of their property under voluntary assignments to a trustee, and in the case of corporations for the purpose of reorganization.

We have also seen the failure of the second main purpose of the act, to grant discharges with some discrimination and to discourage fraud and dishonesty by the exercise of such discrimination. Discharges are shown to be customarily granted without consideration or knowledge of the facts and in most cases without any inquiry regarding the conduct of the bankrupt. The demoralizing effect of all this, not only upon trade but upon standards of business honesty and integrity, is only too obvious.

We have concluded, therefore, that the act should be amended so as to require the examination by a responsible official of every bankrupt and a full presentation of the facts bearing upon the cause of his failure and his conduct in connection therewith for the consideration of the court in determining whether he should have his discharge. The discretion of the courts in granting or refusing a discharge should be broadened; in proper cases discharges should be suspended for a time and the bankrupt in such cases should be required to make some satisfaction out of his after-acquired property as a condition to the grant of a full discharge. Public interest is so directly affected by the indiscriminate grant of discharges without inquiry and disclosure of the facts that the responsibility for such inquiry and disclosure should be imposed upon responsible officials.

Experience under the laws of this country, and of Canada and England, shows that creditors may not be relied upon to examine the debtor and oppose his discharge. In this connection, it is encouraging to note that the imposition of responsibility for the performance of these functions upon competent officials by the English Act of 1883 accomplished the effective reform of evils precisely similar to those which are disclosed by our investigation. These functions we believe will be most effectively and impartially performed by examiners who have no other responsibility in connection with the administration of the estate.

We have seen the faulty administration of estates, largely due to the frequent selection of an inefficient and untrained liquidating personnel, and to the complete confusion of administrative and judicial functions, which has burdened the purely business task of realization and liquidation with unnecessary legal expense. All this has brought the law into disrespect, has deterred business men of training and experience from participating in its administration, and has very largely turned the administration of business matters over to lawyers who, frequently underpaid for important legal services in bankruptcy, necessarily seek to charge for the time spent in routine and business details as for professional services.

We have concluded, therefore, that the compensation of trustees should be put upon a basis which will attract the services of a trained business personnel with sufficient organization to conduct the business of realization, liquidation, and distribution promptly and efficiently and to the satisfaction of the creditors. The choice of the trustee should be limited to competent individuals or organizations who have been previously qualified by order of the court after careful inquiry as to their qualifications.

We have seen the lack of uniformity in practice under the act and of any coordination of effort to improve the methods of administration. We believe that the improvement and perfection of the law will depend upon constant consideration of problems which arise in its administration. It will not suffice merely to amend the law. Continuous vigilance in its administration is requisite to permanent improvement and we therefore believe that competent officials should be charged with the observance of its workings and the duty to suggest to the courts and to Congress methods for the improvement of its administration.

The amendments proposed to carry out these major changes, together with amendments designed in general to promote greater expedition, simplicity and economy in administration, and more effective realization of assets, including provisions for compensating referees on a salary basis, enlarging their powers, jurisdiction, and districts, and gradually reducing, so far as practicable, the number of those who are on part time, and other amendments deemed desirable, are embodied in a draft of a proposed bill for the amendment of the law.

It is believed that the principles outlined above, upon which the revision of the law should be based, are sound and thoroughly justified by the facts ascertained during the inquiry. The specific amendments designed to carry these principles into effect have been long considered and quite thoroughly discussed with various representative committees and individuals. Further discussion, however, will be invited and may lead to desirable changes in form.

In connection with the proposal that official responsibility be assumed for the examination of every bankrupt and for continuous consideration of the problems of administration we have studied the cost of such a system and find that a nominal charge against the estates will afford revenues quite sufficient to fully cover the cost to the Government of maintaining the system.—*Extracts,* *see 4, p. 192.*

A Symposium of Views on Modern Bankruptcy Reform

Owing to the comprehensiveness of the new bankruptcy bill, and the brief time that has elapsed since its introduction and the discussion of its provisions at the joint hearings of the Senate and House Committees on the Judiciary, opinion among those qualified to discuss the problem has not crystallized to the point where a clear-cut Pro and Con discussion of the various suggested changes can be presented. This is particularly true of those proposed reforms that have to do with legal procedure.

Therefore, in place of its usual Pro and Con discussion the Digest, *in this number, presents a symposium of the best comment on the pending bankruptcy bill available at this time. In the ensuing expressions of opinion by those qualified to discuss the subject will be found the principal varying views so far set forth.*

Thomas J. Thacher and Lloyd Garrison

U. S. Department of Justice

Intelligent consideration of the bankruptcy act and its administration presupposes correct understanding of the purposes it was designed to accomplish in the public interest. The fair test of any law is the measure in which it has accomplished or failed to accomplish such purposes and the same test should be applied prospectively but in the light of past experience to any proposals which may be made to improve and strengthen it.

The purposes which the bankruptcy act was designed to accomplish were:

First, to insure the prompt and efficient realization and the pro rata distribution to creditors without preferences of the assets of insolvent estates, unless the debtor and a majority of his creditors agree upon a composition.

Second, to grant to honest and unfortunate debtors a discharge from their debts, and as a corollary to discourage commercial fraud and dishonesty by denying discharges in proper cases and by punishing certain acts as crimes.

The primary purpose of the law was to insure the prompt and efficient realization and the pro rata distribution, without preferences, of the assets of insolvent debtors.

In practice we have found that debtors usually have such meager assets by the time their estates are brought into bankruptcy that it would make little difference whether these assets were paid preferentially to one creditor, or were distributed to all in fractional proportions, or, as is often the case, were consumed in fees and expenses of administration.

The bankruptcy court has increasingly become a dumping ground for the refuse of commercial wreckage, and a sanctuary where debtors obtain cancellation of their debts regardless of how they may have wasted their property. As a medium of distribution the bankruptcy act has ceased to have any importance to the mercantile community except in a very small percentage of cases.

These statements are confirmed by the consensus of opinion of persons having an interest in bankrupt estates. Their truth is recorded in the official reports and is made clear by the following analysis.

A break-up of the clerks' records of all the cases closed in the fiscal year ending June 30, 1930—cases which originated for the most part before the beginning of the depression—reveals the following picture: 65.44 per cent had no assets above exemptions, 8.18 per cent had assets of from \$1 to \$100, 4.62 per cent had assets of from \$101 to \$250, 4 per cent had assets of from \$251 to \$500. Thus 82.24 per cent had assets of less than \$500. Seven and twenty-two hundredths per cent had assets of from \$501 to \$1,500, 6.34 per cent had assets of from \$1,501 to \$5,000. Thus 95.8 per cent had assets of less than \$5,000. Two per cent had assets of from \$5,001 to \$10,000, 1.65 per cent had assets of from \$10,001 to \$50,000, 0.55 per cent had assets of over \$50,000.

Further analysis shows that in 1930 merchants and manufacturers constituted 21 per cent of the bankrupts. It is to them that we must look for what assets there are in bankruptcy. An analysis of all the cases of merchants reveals the following: 24.56 per cent had no assets above exemptions, 5.99 per cent had assets of from \$1 to \$100, 8.46 per cent had assets of from \$101 to \$250, 10.39 per cent had assets of from \$251 to \$500. Thus 49.40 per cent had assets of less than \$500; 21.65 per cent had assets of from \$501 to \$1.500; 18.87 per cent had assets of from \$1,501 to \$5,000. Thus 89.92 per cent had assets of less than \$5,000; 5.5 per cent had assets of from \$5,001 to \$10,000; 3.92 per cent had assets of from \$10,001 to \$50,000; 0.66 per cent had assets of over \$50,000.

This picture of mercantile bankruptcies, bad as it is, is the best that bankruptcy has to offer except for the small and comparatively isolated group of manufacturers. In 1930, 1,322 cases of manufacturers were closed, as against 12,429 cases of merchants. This small group of 1,322 cases yielded the largest total assets in bankruptcy, \$22,568,626, whereas the merchants, nearly ten times more numerous, had total assets of less than twice that sum. Yet even among the manufacturers we find that 76.63 per cent of the cases had assets of less than \$10,000, and that 14.84 per cent had no assets.

Noncommercial cases represented over 79 per cent of the total bankruptcies in 1930. Analyses of cases from several different sources indicate, however, that about two-thirds of those classified in the Attorney General's reports as "others" are in essentially commercial pursuits, such as garage keepers, laundrymen, contractors, brokers, etc. If we make this adustment, and if we omit the farmers altogether as being essentially commercial, the total noncommercial cases in 1930 become about 32,679, or about 56 per cent of the total, wage earners alone being nearly half the total.

Looking to the 95 per cent of all cases in bankruptcy having assets of less than \$5,000, it is pertinent to inquire what is left for the creditors in these cases after expenses of administration are paid.

It appears that the bankruptcy courts have ceased to be important agencies for the realization, liquidation, and distribution of assets. The paucity of assets and dividends in the vast majority of cases show that these courts

are chiefly engaged in relieving from their debts vast numbers of debtors who obtain their discharges without making any provision for a partial payment of their creditors either out of property or earnings.

The creditors themselves are not infrequently to blame for the losses incurred. Credit is often extended carelessly and without adequate inquiry, or with the expectation that profits from the increased volume of sales will exceed probable credit losses. The consequences of modern salesmanship striving to expand sales regardless of credit risk by encouraging persons of moderate means to make purchases on credit which they can ill afford are undoubtedly reflected in the deplorable statistics of bankruptcy. Unfortunately, the losses resulting from such methods do not fall exclusively upon those who are at fault but must be shared by the creditors equally. Furthermore, one bad debt leads to another, and one failure is often traceable to another.

The situation is well illustrated in the case of wage earners who, in large numbers, seek discharge from their debts in bankruptcy because they have been induced by one group of creditors at the expense of another to buy luxuries which they cannot afford. These debtors either because of the more active collection methods of dealers in luxuries or in order to retain property sold to them under conditional sales contracts, often satisfy their debts owing for luxuries and seek discharge in bankruptcy from debts owing to the butcher, the baker, the grocer, and the doctor, who had no part in bringing about their insolvency.

Nor can the most careful traders protect themselves against such losses. To an extent unknown when the bankruptcy act was passed, innumerable business enterprises, in order to survive at all, must extend credit to debtors who are often hundreds or even thousands of miles away. In such cases the debtors are not personally known and the chief sources of information are the credit reports of mercantile agencies. These reports cannot always be kept up to date and many debtors are able, on the basis of a favorable report, to overpurchase fraudulently or improvidently before the next report is made. And finally when prompt and efficient liquidation is necessary in the interest of the creditors the acts of bankruptcy are so narrow and restricted in their application that in the ordinary case the creditors cannot, without risk of incurring a suit for damages, put the debtor into bankruptcy until he is so hopelessly insolvent that little remains to make the procedure worth while.

Thus it is not enough to say that the creditors are responsible for the losses they incur. The public generally is concerned and a law which encourages reckless extravagance and facilitates fraud is opposed to the public interest and should be amended.

A cause which magnifies the losses is the reluctance of debtors to seek bankruptcy until all their assets are gone. This reluctance is due to the desire of the average debtor to avoid the stigma of bankruptcy. There is only one method by which he may obtain relief under the law without being adjudged a bankrupt, and that is by a composition before adjudication. Unfortunately the composition machinery is so cumbersome and so easily abused by minority creditors that it is quite unattractive to honest debtors, as evidenced by the fact that scarcely 1 per cent of the cases in bankruptcy terminate in compositions. The only alternative afforded by the act is forced liquidation.

The want of any effective process for saving debtors upon the brink of failure or for assisting insolvent debtors in the settlement or payment of their debts is one of the controlling reasons why debtors do not seek bankruptcy until all has been lost.

Another reason is the impunity with which insolvent debtors may dispose of their property without any fear of being held accountable should bankruptcy ensue. If they do not fraudulently conceal their assets, merely consuming them in the purchase of luxuries or wasting them through reckless extravagance or gambling, they may be well assured that a full discharge from all their debts will be granted under the benevolent provisions of the act. Even if they have fraudulently concealed their assets their chances of escaping examination and disclosure in the courts are excellent provided they have left nothing to their creditors with which to pay the cost of such examinations.

The second main purpose of the bankruptcy act was to grant to honest but unfortunate debtors a discharge from their debts, and, as a corollary, to discourage commercial fraud and dishonesty by denying a discharge in proper cases and by making certain acts punishable by imprisonment.

Criminal punishments of bankrupts are so few in number as to raise serious doubt of the adequacy of the enforcement of the criminal provisions. These provisions are far more limited in scope than those of England, Canada, and other countries. They cover, in general, only concealments of property and perjury, whereas various unconscionable acts committed by debtors during insolvency are criminal offenses in other countries. It is believed, however, that until the existing laws are effectively enforced, nothing is to be gained by broadening their scope. Adequate enforcement will be quite impossible so long as bankrupts, except in rare cases, are able to obtain the benefits of the act without any adequate inquiry into their conduct. The same want of inquiry enables many compositions to be put through by bankrupts whose conduct, if made known, would not entitle them to the discharges which they thus obtain by the payment of a small percentage to creditors. The discharge provisions of the act may be made effective deterrents of commercial dishonesty and fraud if in every case the conduct of the bankrupt is subjected to searching public inquiry. The lack of such inquiry except in rare cases, as the law is now administered, facilitates practices the law was designed to prevent.

The fact that 98 per cent of the mercantile bankrupts and about 99½ per cent of the nonmercantile bankrupts who seek discharges are granted them outright, and the fact that these percentages appear to have been practically constant since the earliest days of the act despite the gradual addition of new grounds for denying a discharge, indicate that the fundamental weakness of the act lies elsewhere than in the mere enumeration of the grounds for denying a discharge, which now embrace most of the fraudulent acts which a bankrupt would be likely to commit.

The facts indicate that the fundamental weakness of the discharge provisions is in the theory underlying them. A discharge is a privilege, which should be granted only to those who, upon inquiry, are found deserving, but the statute, in effect, treats the discharge as a right, which should be denied only upon the proof of fraud by the

creditors. The major consequences of this treatment are as follows:

(1) The public interest involved is not recognized; (2) no one is under any duty to examine into the bankrupt's conduct and affairs; (3) no one is under any duty to oppose the bankrupt's discharge, however fraudulent his conduct has been; and when opposition does arise it is treated as a matter of private concern. The procedure is hedged with technicalities and the contest may be waged or withdrawn for purposes of private gain; (4) the courts have been shorn of all discretion, so that in the absence of opposition they must grant the discharge outright, even though the bankrupt be then in jail for fraudulent concealments; or if there is opposition they cannot temper their action to fit the equities of each case and the circumstances of each bankrupt.

Two conclusions are justified by the facts:

First, that unless provision is made for inquiry into the conduct of every bankrupt and for presenting the facts impartially to the court, such inquiry will never be made except in a handful of cases where some pecuniary gain may be expected to result, and in all other cases the bankrupt will have his discharge for the asking and without inquiry or disclosure.

Secondly, that unless the courts are given power to discriminate between the different classes of bankrupts described above, and to grant full relief or partial or temporary relief or no relief at all, according to the facts presented, vast numbers of people for whom the law was never designed will continue to pervert its objects without the slightest hindrance, all to their own demoralization and the injury of the public interest.—*Extracts, see 4, p. 192.*

The Bankruptcy Committee of the Judicial Conference

THE conference appointed a committee to consider the memorandum and the proposals submitted by the Attorney General, and the committee made the following report:

"The committee appointed by the conference to consider the general supervision of the bankruptcy administration in the district courts reports that it has noted with approval, the request of the President that the Attorney General undertake an exhaustive investigation into the whole question of bankruptcy law and practice, with the purpose of proposing to Congress essential reforms.

"The Attorney General has submitted to the conference proposed tentative amendments to the bankruptcy act and has, through the Acting Attorney General, Solicitor General Thacher, presented the reasons therefor orally as well as in printed memorandum. We have examined both with a view of being advised wherein the present act, at this time, has failed to achieve the purposes of its enactment in ensuring a prompt and efficient realization and proper distribution of the assets of insolvent debtors, as well as granting to honest, but unfortunate, debtors a discharge of their debts in cases where they should be relieved and to deny a discharge where fraud and dishonesty are revealed; also to visit appropriate punishment by imprisonment where the law requires. The able study and diligent research of the administration in the past under the bankruptcy act, as made by the Attorney General, discloses that legislation is required to accomplish a more efficient administration for the benefit of both creditors and the bankrupt.

"We therefore advise the conference that it recommend to the Congress, through the Attorney General, the advisability of legislation amending the present bankruptcy act as follows:

"(a) By provisions necessary to make the discharge in bankruptcy just and effective; to insure a thorough examination of the bankrupt, with due regard to the public interest involved; and to discharge fraud and waste.

"(b) Measures to encourage prompt steps toward liquidation or settlements by insolvent debtors; in matters of composition; to obtain extensions of time for the bankrupt to pay; relating to assignments for the benefit of creditors; to provide relief of wage earners from garnishments or attachments.

"(c) Measures to promote the appointment of more efficient trustees, with sufficient provisions for the voting representation of creditors; a more summary procedure for the administration of the estate of the bankrupt by the trustee, with due regard for simplified and expeditious proceeding in filing schedules; creditors' meetings; sales; and dividends; provisions for agencies to coördinate the bankruptcy administration; and promote uniformity of practice without interference with judicial supervision; to regulate compensation of trustees; and the appointment of referees and consideration of the basis for competition."

This report of the committee was adopted by the conference, and the recommendations of the conference are made accordingly.—*Extracts, see 4, p. 192.*

Jacob I. Weinstein,

National Association of Federal Practitioners

THERE is now pending in Congress a Bankruptcy Bill embodying radical and revolutionary changes in the present Bankruptcy Act and in equity receiverships. The bill was drafted at the instance of the Attorney General and was sent to Congress with the endorsement of the President of he United States as an emergency measure. It is before the Judiciary Committees of the respective branches of Congress and joint hearings thereon are now in progress.

We find that this bill has been inspired largely by recent disclosures in the bankruptcy practice in the Southern District of New York. It attempts to correct abuses which may have existed to some extent in that district but which do not exist in other sections of the country.

We recognize that some changes in substance are advisable and many changes in procedure are necessary in order to strengthen the present act and speed up the proceedings. But we find that the proposed bill provides for a series of revolutionary changes which we consider

inadvisable and highly objectionable. We shall confine ourselves to a few of the more important innovations.

1. Creation of a bureau of salaried administrators and examiners:

The bill provides for a group of administrators and examiners to be appointed by the Attorney General and responsible to him. The examiners are to be subject to the civil service laws while the administrators are not. These persons are given the right of audience before the court. They are charged with the duties of supervising bankruptcy administration, of the examination of all bankrupts and the causes of their failure.

We consider this bureau a gratuitous governmental interference and an unwarranted attempt to regulate the private relations between debtors and their creditors. It seems to us that the public concern of the Government has been and is being adequately served and expressed in our present act; it is in its fundamentals best suited to our needs and has withstood the test of trial for over thirty years. With a few revisions to correct obvious defects our present act can be made adequate and satisfactory to serve our requirements.

Our Government has been experimenting in paternalism, bureaucracy and a variety of other forms of regulation of our private affairs with the result that we are now enmeshed in a multiplicity and confusion of laws and rules which daily make criminals of every one of us. The expense of government, to a large extent resulting from the multifarious functions assumed by it, has reached such stupendous sums that we may well entertain the misgiving as to whether, if we continue at our present pace, our Government will ever be able to balance its budget except by ever-increasing and oppressive taxation. We find that instead of building up the integrity of the individual, our Government has only succeeded in breaking down the respect for law and in creating a hundred abuses for every one attempted to be cured.

We see in this contemplated bureau only another opportunity for political patronage. We will not concede that administrators and examiners in bankruptcy will function either more inexpensively, or more efficiently or more honestly than do attorneys, for whom they are to substitute. We do not expect from such a bureau results of a different or higher order than we are now experiencing with Prohibition units and other like bureaus or officials. We conceive that officials vested with unusual powers, which can readily be turned to advantage as favors, will be exposed to the temptation of opportunity. Such a bureau will always carry the threat of just another "racket."

We are aware that a system similar to the one proposed has been in use in England. We are not quite sure that it is free of abuse. But if it is, we must not overlook the fact that conditions in that country, both political, social and economic, are vastly different from our own. By reason of our experience and temperament, we have always resented governmental interference in private matters; it is contrary to our scheme of things and disturbing to our freedom of action. It may be of interest to note that Canada, which has adopted the English Act, has avoided this feature. To accomplish the same result, Canada has attempted by a searching questionnaire, which every bankrupt must answer under oath, and by a statement of affairs, which is a combination of a financial statement and our form of schedules, to procure such an investigation. We have carefully studied the Canadian forms covering this procedure. We are convinced that there is no procedure devised by either of these Governments which in efficacy is comparable with that furnished by our present act, with the proviso, of course, that it be properly observed and enforced. And we can conceive of no system or procedure, no matter how perfect or ideal, which can have any value if it is not conscientiously executed. The results sought to be accomplished must of necessity depend upon the enforcing personnel.

May we indicate one or two obvious defects in the practical operation of this bureau. While the act permits a trustee to bring on a hearing for a discharge he is vested with no right and is charged with no further duty to participate in or pursue the proceedings. The right to a review of the findings of the court is limited to the bankrupt or a creditor. If the bill intends that it shall be the function of the examiner merely to investigate and adduce the facts, whatever they may be, for consideration by the court, then who for the estate shall appear and prosecute the proceeding to a conclusion, with the attending reviews, etc.? In the case of a suspended discharge, who shall represent the estate in the settling of the specific terms and conditions thereof? Of course, a creditor may do so. But will his interest in contesting a discharge or the terms of a suspended discharge be any greater under the proposed bill than it now is under our present act? There is no provision for the reimbursement for costs and expenses in the event of such a contest at the instance of an individual creditor or any group of creditors. And if such a provision were written into the proposed bill, it would of necessity be limited to the event of a successful outcome. Experience has shown, in the cases of composition settlements, that the alternative of a creditor failing in such a contest, with the consequent loss of expense incurred and undertaken, is a sufficient deterrent. It should not be overlooked that our present Act has the virtue at least of permitting a creditor to obtain authority for a trustee to contest a discharge at the expense of the estate.

On the other hand, if it is intended that the examiner shall represent the estate in a discharge proceeding, to be implied from the provision giving him audience before the court, then we have the very anomalous situation of the admission en masse to the practice of law of a group of individuals who need not be lawyers. It may indeed be speculated as to how far such a right may be extended and what confusion may result from the diversity of interpretation by different courts.

The examiners are to furnish reports to the court. What an opportunity for prejudice and oppression! In effect, it will constitute a substantial denial of a fair and open trial. It savors of "star chamber" proceedings. There will be two sets of records, one to be made up by the parties to the proceeding and the other for the private information of the court. The bill does not define or limit the nature of the report. If it is intended to be different from the evidence adduced before the court in the course of the examination of the parties, then obviously its contents will in large part consist of non-legal evidence and comment or opinion of the examiner. It is certainly a startling and reactionary innovation in our trial of issues.

It is apparent that the framers of the proposed bill have had no actual experience with bankruptcy practice.

2. Licensed trustees:

By this provision the bill in effect creates another bu-

reau. All trustees must be licensed and only licensed trustees may be appointed receivers. The administrator passes upon the qualifications of the candidates for such licenses and the judges appoint a limited number in their discretion qualified to act. Where the court is composed of two or more judges, the selection must be unanimous. We stop to speculate whether the same political considerations which prevailed in the Southern District of New York resulting in the abuses which have inspired the proposed bill, will not be revived. It would be stupid not to recognize this opportunity for politicians and the pressure on our Government and on the courts to obtain licenses for those politically supported. We may indeed wonder whether such a provision will not be honored more in the breach rather than in the observance.

By other provisions of the bill, the right of selection of receivers and trustees by creditors is to a large extent cut down. By limiting their choice to licensed trustees this right is further narrowed and circumscribed. Nor can it be overlooked that these trustees in recognition of the powers which appointed them may find themselves obliged under pressure or otherwise to exchange political favors, etc. It requires little imagination to see in such a system a vast opportunity for abuse and fraud.

This plan has been tried before; it has been repeatedly attempted in Continental Europe and regularly abandoned because it has failed to give satisfaction. It was attempted in Canada under the Act of 1919. Abuses became so rampant that the provision was hastily repealed in 1923 and the uncontrolled selection of custodians and trustees was returned to creditors. In a modified form it was part of our Act of 1867 which made the appointment of assignees by creditors subject to the approval of the judge and gave the judge the right to appoint additional assignees. The power of judicial appointment was abused in a number of districts and the system resulted in general dissatisfaction. The plan just won't work and it cannot be made to work.

In our experience with practice under the present act, we have found, as a rule, receivers and trustees are able, honest and anxious to do their jobs well. They are usually selected with care and are alert to give satisfaction. From the very fact that the field is open and wide, the individual called upon to serve realizes that if he fails to give satisfaction he will not be used again. It is a simple problem in psychology; the attitude and conduct of an individual cannot but be influenced by his knowledge that he *may* be chosen rather than that he *must* be chosen.

Another objection to licensed trustees and to the method of their selection lies in the virtual exclusion of creditors from their control of the liquidation and administration of estates. The argument has been made that under the present act creditors take little or no interest in selecting trustees and in following the proceedings. But on analysis we find that that is not true. When creditors furnish proxies, they practically exercise the control vested in them. The fact that they do not exercise it wisely is immaterial. It is not the function of Government to bestow or enforce wisdom by statute. Creditors should be permitted from their own experience to solve their own problems. They are doing it most effectively today through trade organizations and in the important cases they are exercising a very efficient and adequate control in the selection of trustees and in the administration of estates. But it is a flexible control which can be varied by them from time to time and adapted to the emergencies and necessities of every case. It is not right that they should be divorced from their interest in estates or that they should be obliged to accept as a substitute a virtual bureau of trustees which at its best cannot but become perfunctory, routine and detached. Such a system affords an invitation to multifarious abuses.

3. Suspended discharges:

This is a pernicious provision lifted from the English and Canadian systems and grafted on the proposed bill. It is unsuited to our conditions and foreign to our spirit. Particularly at this time, it would work the most serious harm. To realize its full significance we must understand the policy and scheme of the bankruptcy systems from which the innovation has been borrowed. In England bankruptcy is deliberately made disagreeable and disgraceful. The dishonest or incompetent debtor is to be driven out of business and not allowed to return. The proceedings for a discharge are made so severe and the regulations for a suspended discharge so onerous that in only twenty-five per cent of the cases does a debtor apply for his discharge. Besides, a debtor who has obtained one discharge can never receive another. Such a system may perhaps well fit in with the English conception of economic opportunity; but it is not in accordance with our notions of freedom and equality of opportunity. A provision which has for its purpose the annihilation or stifling of such opportunity is subversive of our most fundamental ideas of freedom of action and development. We refuse to admit that a person who has failed should be denied another chance.

In Canada, because of the rigorous provisions relating to discharges, most settlements are made outside of the act. That country, young, enterprising, and progressive, cannot afford to stifle enterprise and adventure in business. Extension of credit is predicated not so much upon capital investment as upon the ability and enterprise of the individual. We are not yet ready in our country to admit that we are at the end of our enterprise and progressiveness. We have made our greatest strides in the last generation chiefly through enterprise and adventure in all fields. It may be true that our advance has been accompanied by a waste and loss which an excessive caution would or could have prevented. But if we had repressed that spirit of enterprise and adventure we would never have made the strides or reached the heights. We have gone farther and higher, because we were able to proceed without too great hindrance or too much fear of consequence. If we were to strike an account of the advantages and disadvantages of our methods, it would be found that the balance overwhelmingly favors the advantages.

We believe that our present provisions for the punishment of a dishonest debtor and for barring his discharge are adequate and sufficient. We think the procedure could and should be simplified, particularly with regard to the burdens of proof which should be imposed on the debtor. But we consider the feature of suspended discharges as pernicious, oppressive and fundamentally un-American.

4. Expansion of the bankruptcy act to include extensions, assignments for the benefit of creditors and corporate reorganizations:

Again we regard this attempt as an unwarranted interference with private adjustments between debtors and their creditors. To one experienced in these forms of liquidation and reorganization, it will at once be obvious

that they do not lend themselves to stereotyped and over-refined rules and regulations. The variety of arrangements is almost as numerous as the cases involved. To obtain satisfactory results, these arrangements must be left free and flexible. To force them into the moulds provided by statute would be like attempting to fit a square peg into a round hole.

From an analysis of the provisions, it is clear that the framers of Chapter VIII, covering these arrangements, have failed to give the subject either scientific consideration or consistent treatment. The confirmation of an extension or of a corporate reorganization is made subject to the usual grounds of objection applicable to a discharge. An extension which presents entirely different problems and considerations from the ordinary composition offer may nevertheless be accepted by the same bare majority of proved claims, which we know from experience frequently represents only about 25% of the total indebtedness. Yet, assignments for the benefit of creditors, subject to the grounds for opposing a discharge, must be accepted by a majority in number and two-thirds in amount of all claims allowed. We can see no reason why a composition, following an assignment to a licensed trustee, should require a two-thirds acceptance, while an extension agreement only a majority vote.

The sections covering assignments and corporate reorganizations are much too complicated and involved to permit of even a cursory treatment at this time. The bill is so framed that virtually all assignments for the benefit of creditors must be administered under the act. This again deprives debtors and their creditors from freely pursuing their own methods of procedure in effecting private adjustments.

The provisions relating to corporate reorganizations are complex and highly technical. Be it sufficient to observe that they expose this proceeding to contests so innumerable as to render it well nigh endless and oppressively expensive.

Some doubt has been expressed as to the constitutionality of Chapter VIII. It may be questioned whether extensions, assignments for the benefit of creditors and equity reorganizations can be brought within the constitutional clause which provides for a uniform system of bankruptcy. In this connection, we suggest consideration of the meaning and construction of "system of bankruptcy." It has also been suggested that the section relating to corporate reorganizations is a serious and unwarranted encroachment on the province of our State courts.

A reading and analysis of the proposed bill will disclose other instances of commission and many instances of omission. Except for some procedural changes in the subjects of service of process, notices to creditors and discharges, the framers of the bill have overlooked a number of defects both in substance and procedure, as to which the present Act should be corrected.

Professor James Angell McLaughlin,

Harvard Law School

The pending administration bill raises very ponderable questions deserving the careful consideration of Congress with reference to changes in bankruptcy administration. It is also necessary to give serious attention to the objections made to the bill. I think the issues on that question have been adequately framed and outlined by Mr. Garrison and by members of the bar, such as those represented by the National Association of Federal Practitioners. I want to call the attention of Congress, however, to matters of equal importance which have completely escaped consideration at the present session. These relate to the substantive law of bankruptcy. Important as it may be to improve administration and insure, if possible, that assets reach the bankruptcy court or some other tribunal for liquidation or adjustment, it can be scarcely less important to see that the assets are equitably distributed among creditors, giving due credit to the bankrupt's exemptions and due force to valid securities. Thirty-four years of experience under the Act of 1898, with its several minor amendments, has developed certain serious errors, both of omission and of commission, in the draftsmanship of the statute, and additional questions, perhaps originally avoidable, have grown out of court decisions. In some places the courts have necessarily held that the bankruptcy act means the opposite of what it says. In other cases, they have never been able to work out any consistent harmony between different provisions of the act. This makes for doubt and litigation, increased attorneys' fees, and dissatisfaction of business men.

In some respects, the popular conception—and I might suggest perhaps the common conception—in Congress with relation to bankruptcy has not been accurate. Bankruptcy proceedings are not devices whereby the creditor acquires new powers to oppress the debtor. They are, in part, a means of relieving a debtor of his existing entanglements. What the creditors get out of bankruptcy is a more or less fair distribution of those assets that remain. I have talked to no experienced lawyer who is desirous of going back to what my predecessor as a teacher of bankruptcy law—Professor Williston—used to call "grab law." There is no reason why the unduly sly or aggressive creditor should be allowed to walk away with the vestiges of the bankrupt's property. Consequently, the bankruptcy laws have been devised with a view to setting aside undue advantages. This the Act of 1898 accomplishes in some degree, but imperfectly and at needless expense to litigants by reason of matters which might be readily cured by Congress. It is only possible to do this by a careful study of the technical provisions of the law and of the court decisions. I have made such a study, the results of which were published in articles in the "Harvard Law Review" of 1927, discussing, first, the amendments of 1926 and, secondly, the matters of improvements which I conceived were in no way affected by the amendments at that time. These articles, although they do not in all respects contain my last thoughts on the subject, embody in much more complete and accurate form the important points that could be made in any discussion before the committee so far as I am concerned. My appearance this morning is simply for the purpose of selecting a few points by way of illustration to show how the law can be rendered more simple in its operation, more certain, and less of a trap for all but the most experienced bankruptcy lawyers.

I want to urge most strongly not that the committee recommend that Congress adopt my precise proposals but that serious consideration be given to the problems raised by those proposals. I think it is inconceivable that any intelligent draftsman with a fair knowledge of bankruptcy could fail to improve the substantive provisions

of the law with reference to preferences and voidable liens. Any intelligible provision with relation to transactions with a bankrupt between the date of the petition in bankruptcy and the qualification of a trustee would be an improvement over the existing situation where the act contains no express provision and makes certain inconsistent innuendoes which have led to two inconsistent lines of decisions in the Supreme Court.

To classify very briefly the natures of the problems, they are, roughly, as follows:

1. Amendments rejecting minor passages in the existing act which are false and misleading, in view of other provisions of the law and in view of the court decisions.

2. Provisions curing omissions in the act which lead to doubt and expensive litigation.

3. Provisions improving the coördination of different sections of the act upon related subject-matter.

4. Provisions strengthening the law of preference in order that some creditors may not be able to take undue technical advantage, as I conceive they can under the existing law.

5. Provisions abrogating judge-made refinements which needlessly cause bankruptcy law to be unintelligible to business men and distrusted by them.

As a chief illustration of the last class of amendment, I should recommend simplifying the law of stock brokerage bankruptcy by abolishing most of the supposed rights of marginal customers to follow specific securities that accidently survive the devastation of brokers' insolvency. Considerations which from any human point of view are matters of sheer luck now make the difference between complete recovery and infinitesimal dividends.

If a substantial number of the foregoing problems were treated in any adequate fashion, whether in quite the way I have treated them or otherwise, dividends in bankruptcy would be higher, and it would be necessary for creditors to suffer less losses by way of paying attorneys' fees for disappointed hopes. There is nothing in my proposals that would in any way make the act more oppressive to debtors; it would operate to the disadvantage of creditors endeavoring to take undue advantage of the bankrupt and other creditors on the eve of bankruptcy.

These matters are too technical to attract the attention of Congress in and of themselves, but now that the entire question of comprehensive amendments of the bankruptcy act has been opened up, it would seem unfortunate to pass by the opportunity to make at least some of the more obviously beneficial changes.

Judge Max Isaac,

The American Bankruptcy Review

SPEAKING from thirty-four years' experience as a lawyer, as a referee in bankruptcy, and as an editor in the field, I can safely assert that 90 per cent of the dissatisfaction with the American bankruptcy law is due to the carelessness and absolute indifference of creditors, or to the failure of creditors to unite in their efforts in contesting with the fraudulent bankrupt but rather leaving it to the trustee to carry the burden alone. And, in part, it is due to the selfishness of the individual creditor in seeking to obtain the best advantage for himself out of the wreckage. Due to this indifference, lack of interest, or selfishness, creditors prefer to follow the tendency of the times and to lay at the door of the Government the tremendous burden of carrying on their warfare at Government expense. Members of the Congressional committee hearing the bankruptcy bills have questioned creditors' representatives appearing before the committee to ascertain why the Government should, through this new idea of paternalism, follow up the rights of the creditors by setting up a cumbersome and expensive bureau of bankruptcy administration. In some instances the reply was that since the Government of the United States, in carrying out the constitutional provision for the establishment of a uniform system of bankruptcies, has impaired the obligation of the debtor to the creditor, the Government owes the duty to the creditor to help him to the uttermost in enforcing his rights against the insolvent. In some instances the question has been answered by the statement that there was involved a great public interest. Retorts by some members of the committee were, "Just what is this great public interest?" This is the question which confronts the American public today. There is no greater obligation upon the part of the Government of the United States to run down each case of bankruptcy in which some creditor may assert that there has been some violation of his rights than there is on the part of the States, when allowing a debtor his homestead under State law, to inquire into and ferret out every charge of fraud involved in the relationship between the creditor and debtor. The State passes the law for the benefit of the debtor or creditor. Its utilization depends upon the action of the individual.

This is no time to expend millions of dollars of the public's money in establishing a bureau in which there will be paid salaries to twenty administrators and not less than 300 examiners, together with their large force of salaried men and women who will do little more than gather a lot of worthless statistics and hold up a large number of discharges and uncover here and there an occasional cache of hidden assets in many cases in which receivers and trustees would be equally successful, and constantly enlarge and increase this Government bureau until we shall have fastened upon the already heavily burdened taxpayers of this country an army of Government inspectors and examiners equalling, perhaps, the present prohibition forces of the country.

There is no lack of machinery in the present bankruptcy law to afford every creditor the fullest opportunity to investigate his debtors' affairs and to secure such relief, either by civil or criminal action, as fully as could be obtained if a Government bureau operated this tremendous machine. For instance, under Section 21a, creditors are immediately afforded the right to call the bankrupt, or any other person who may know anything concerning his affairs, before some officer designated by law and to put the witnesses through the most severe examination concerning the bankrupt's affairs. Under Section 29e whenever any referee, receiver, or trustee shall have grounds for believing that any offense under the bankruptcy law has been committed, or from facts or circumstances brought out in the course of administration or otherwise, that there is reasonable ground to believe that such an offense has been committed, or for special reason, an investigation should be had in connection therewith, it shall be his duty to report such matter to the United States Attorney for the district in which

it is believed such offense has been committed, including in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses, and a statement as to the offense or offenses believed to have been committed. And under the same section it is the duty of every United States Attorney immediately to inquire into the fact so reported to him, and, if it appears probable that any offense has been committed, in a proper case and without delay, to present the matter to the grand jury, unless upon inquiry and examination such district attorney decides that the ends of public justice do not require that the alleged offense should be investigated or prosecuted, in which case he shall report the facts to the Attorney General for his direction in the premises.

"But," say the creditor interests who favor unloading upon the Government of the United States the task of carrying their heavy burdens, "this criminal machinery of the Government has broken down." Reports to the United States attorneys fail to bring the desired results, they say, but what about the reports to the Attorney General? The very idea of the new bill is to place upon the Attorney General of the United States the responsibility of administering the entire bankruptcy machinery of the country. If experience has shown that he cannot successfully carry the burden of the small percentage of cases to which reference has already been made, then in the name of common sense and simple justice how will he be able to carry the burden for the whole country? And what potent power have these administrators and examiners to create assets where there are no assets or to unearth and discover assets with any greater degree of success than the local authorities who know more about the habits and conduct of the individual debtor than any number of Government examiners can ascertain? Remember, too, that the bankruptcy courts create neither assets nor liabilities. The cases come into the courts with that burden and responsibility already fixed and no magic wand can be created by law that will either increase the one or reduce the other. In all of the affairs of life we must not lose our sense of proportion nor overlook the fact that the administration of law (not the mere creation of new law) depends upon the frailties of human nature. And this exists everywhere, whether in the person of the individual trustee, the official truseee, or the Government administrator or examiner.

This is no time to tinker with the machinery of so serious and important a law as the country's commercial code, the bankruptcy law of the United States. At least the country should be given an opportunity to thoroughly analyze and study this very far-reaching measure, introduced during the spring of the present year and now likely to be acted upon at an early date. Lawyers are criticised for their handling of bankruptcy cases. But upon the shoulders of the lawyer falls the responsibility of seeing that no unjust or unfair law is placed upon the statute books. And business, itself, will soon realize that it cannot bear the strain and responsibility of unwise and unjust bankruptcy legislation at this critical time.—*Extracts, see 5, p. 192.*

R. Preston Shealey,

National Retail Credit Association

It is so much a matter of common knowledge that undue extravagance, hazardous speculation and gambling, and neglect of business plays a large part in American insolvencies that the writer has not considered it necessary to dwell at length upon that phase of the matter. In fact, we have become so notorious in that regard that even foreign newspapers have editorially commented on the part that such acts have played in bringing about our business depression. Our own newspapers have repeatedly pointed out how it is possible to go through bankruptcy and get a discharge from indebtedness even to the necessaries of life.

Certain definite remedies for the solution of the situation have become crystallized in the minds of many retailers and they are substantially embodied in the resolutions adopted on June 19th, 1931, at the St. Louis Convention of the National Retail Credit Association. The first of these remedies provides that the bankruptcy act should be amended so as to provide that a discharge shall not release the bankrupt from indebtedness for the necessaries of life, and the Court, as in Canada, shall have the power to fix the terms of payment of such indebtedness to the end that a discharge may ultimately be obtained. It has been suggested that such an amendment to the bankruptcy act is unconstitutional because it is class legislation. That objection, however, is not well taken. Such an amendment would be constitutional. The Supreme Court in Brown-Forman Co. v. Kentucky, 217 U. S. 563 has said that our legislative bodies possess wide discretion in classifying for purposes of legislation, trades, callings, businesses, or occupations, and in making this statement has said "If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

Being a relative term it is not possible within the scope of this brochure to mention every article or thing which may be comprised within the term "necessaries" but among them may be mentioned: food, raiment, medicines, medical assistance, habitation, fuel, furniture, and it has even been held that under certain circumstances gold watches and chains and even diamond studs may be included within the term. In fact, a piano has also been held in the particular circumstances of the case to be so included.

Necessaries of life are defined in Bouvier's Law Dictionary as follows: "The term necessaries is not confined merely to what is requisite barely to support life but includes many of the conveniences of refined society. It is a relative term, which must be applied to the circumstances and conditions of the parties."

The suggested amendment to the bankruptcy law barring necessaries took concrete form in the 70th and 71st Congresses in the shape of the Sears Bills, the last of which not only barred necessaries from discharges, but also provided that as to debts contracted within four months of bankruptcy the burden of proof should be shifted to the bankrupt to show that they were contracted in good faith. This particular portion of the Sears Bill was aimed at a situation which is responsible for large losses to retailers; the all too frequent practice of individuals running up large bills and then going into bankruptcy. A discharge under such circumstances might be blocked on the ground of fraud, but fraud must be exactly proved. To do so is difficult yet the circumstances may be suspicious and so under this proposed amendment, the bankrupt would have to clear himself in order to get a discharge. The suspicious purchases were, however, the bankrupt's own acts; ample grounds by analogy are al-

ready to be found in section 14b of the present act shifting the burden of proof to the bankrupt under certain circumstances specified therein.

The resolutions of the National Retail Credit Association endorsed an amendment to the effect that no voluntary petition should be permitted to be filed unless the debtor owed a minimum of $1,000 in unsecured indebtedness, following in this regard a somewhat similar provision in the Act of 1867 and like provisions as contained in the Canadian and English acts of today.

The third proposed amendment endorsed provided that the Federal Courts should be empowered to refuse a discharge altogether when the insolvency was brought about in whole or in part by undue extravagance in living, hazardous speculation and gambling, and culpable neglect in business; or, postpone the discharge for a fixed period of time to the end that a fixed dividend to the creditors shall be paid or after-acquired assets impounded for the benefit of creditors. This resolution endorses the principle in this regard and that principle, when translated into legislation would probably take the form of an additional sub-section to section 14 of the present bankruptcy act. It cannot be attacked upon the ground of unconstitutionality and can be made sufficiently flexible to cure, as far as legislation can do so, the evil which it is designed to cure.

4. Legalizing common-law compositions and settlements: The fourth resolution if translated into legislation embodying its principle would legalize common-law compositions, liquidations and extensions under certain conditions and utilize for this purpose whenever practicable the services of credit men's service and adjustment bureaus. It would provide an inexpensive form of extension or liquidation and at the same time afford a means by which two or three objecting or, as is commonly termed, "sand bagging" creditors, could not upset such extensions or liquidations when approved by the Court.

A survey in bankruptcy administration has just about been concluded by the Department of Justice in coöperation with the National Retail Credit Association and other business organizations. Among other steps in this survey a large number of questionnaires were sent to retail members of the National Retail Credit Association and that questionnaire, at the suggestion of the author, contained questions dealing with the suggested amendment fixing a minimum amount of unsecured indebtedness under which voluntary petitions could be filed, analogous to similar provisions in the English and Canadian acts of today and as contained in the American Act of 1867. The answers to these questions when summarized will afford an interesting answer as to how retailers view this particular amendment, and their answers similarly summarized and published, as to their views on the proposed amendment barring necessaries of life from discharges would likewise be of interest. The writer confidently predicts that the answer to both of these questions will be overwhelmingly in the affirmative and he would not be surprised if a very large proportion of wholesalers to whom these questions were also sent will likewise answer these questions in the affirmative.

Certain other problems in connection with the retailer and bankruptcy must be given some thought and study. It will be found that when the complete story is unfolded to Congress there exist numerous instances of adjudication in bankruptcy on one day and immediate opening of a new business by the bankrupt in nearly the same location the next day. If a bankrupt has failed through misfortune and no fault of his own and is financed by relatives and friends to start anew, even the next day, it is not to be expected that an American Congress would penalize reopening under such conditions, but there are numerous instances of reopening under suspicious circumstances and this situation will have to be given consideration. This, however, is largely a problem for the banker, the wholesaler, and the manufacturer. More immediately another problem of the retailer is the all too frequent practice of individuals filing voluntary petitions in bankruptcy to get rid of judgments for negligence in automobile accidents. If the act upon which the judgment was predicated was "willful or malicious" a discharge can be blocked; if only negligence it cannot. It will be found in practice that individuals are much the greater offenders in this regard than mercantile units and it is for this reason that it is so largely the problem of the retailer.

Let us conclude with the reminder that as "Rome was not built in a day," so also the progress of bankruptcy reform is necessarily slow. Bearing in mind, however, the interest that has already been awekened and progress achieved by retailers in national work, especially by the National Retail Credit Association, it is not too much to hope for remedial bankruptcy legislation from the standpoint of the retailer within a reasonable time.—*Extracts, see 5, p. 192.*

The 72nd Congress « « Now in Session

Duration—March 4, 1931-March 4, 1933. First Session Convened Dec. 7, 1931, Recessed from Dec. 22, 1931 to Jan. 4, 1932.

In the Senate

Membership
Total—96

48 Republicans | 1 Farmer-Labor | 47 Democrats

Presiding Officer
President: Charles Curtis, R.
Vice-President of the United States

Floor Leaders

Majority Leader James E. Watson, Ind., R.
Minority Leader Joseph T. Robinson, Ark., D.

In the House

Membership
Total—435

213 Republicans | 1 Farmer-Labor | 3 Vacancies | 218 Democrats

Presiding Officer
Speaker: John N. Garner, D.
Member of the House from Texas

Floor Leaders

Majority Leader Henry T. Rainey, Ill., D.
Minority Leader Bertrand H. Snell, N. Y., R.

The Month in Congress

As the first session of the Seventy-second Congress draws to a close, members of both houses are beginning to cast up their accounts and to wonder what effect their actions during the past six months will have on the voters of their respective states.

Not since the exacting period of the World War and immediately after has a Congress been called upon to face so many perplexing problems. And never, in modern times, has Congress been so bewildered and uncertain as to its task.

Not since March, when the revenue bill was taken up on the floor of the House and proved to be the bit of legislative dynamite that wrecked the Democratic harmony in the House, has a single member of the House or Senate had a peaceful day.

That Congress has had a bad time of it is no surprise to veteran observers of National politics. The only surprise is that, considering what it was confronted with, Congress has done as well as it has.

To begin with, Congress convened at a time when the major topic of conversation throughout the country, and particularly in the east, was the economic situation. Next, Congress was notified, as soon as it met, that there was a growing deficit in the United States Treasury and that for the first time in a decade the regular income of the Government had fallen below the cost of running the Government.

This announcement would have been bad enough in ordinary times without anything else added to it, but on top of it members of the House and Senate, before they had more than time to open their first morning's mail, discovered that there was an unprecedentedly large number of American citizens who had definite ideas about what Congress should do and that these citizens were in a mood to convey those ideas to Congress, individually and collectively, in terms frequently more emphatic than polite.

Even this might have been met with a fair amount of calm by Senators and Representatives had there been anything approaching unanimity among the view-expressing citizens. Or even had this mass opinion been divided into a few categories.

But the fact was, that, except that most of the letter writers could be divided roughly into two classes—those who wanted Congress to appropriate more money and those who wanted Congress to appropriate less money—almost every letter writer evinced a preference for some pet project that did not at all fit in with what the other letter writers were demanding.

And to pour the last drop into the Congression cup of woe and fill it to overflowing was the fact that Dame Fortune had decreed that this year of extraordinary trial and tribulation in other respects should also be the year in which a Presidential election was to occur. And not only a Presidential election but an election of the entire membership of the House of Representatives and of one third of the membership of the Senate.

It is true that the entire membership of the House and one-third of the Senate is elected every two years. But in a Presidential election year things are different. The political spotlight is turned on the entire country. In the off-year a Senator or Representative has his own territory to consider without great regard to his political party as a whole.

Every four years, however, his whole party goes on trial and, in nine cases out of ten, except in those states which are wholly one-sided politically, what happens to the Presidential candidate also happens to the Senators and Representatives of his party who are up for reelection.

Therefore it is inevitable that during every session of

Congress preceding a Presidential election the question of party politics plays a vital part.

With all these various elements involved in the situation it is small wonder that a Congress, with a hair-line division between the two major political parties in both houses, should begin to appear slightly dishevelled as the session wore on.

At the outset the prediction was that, with the Democrats having a narrow majority in the House and the Republicans having an equally narrow majority in the Senate, a coalition of recalcitrant Republicans and Democrats in the Senate would dominate the legislative situation. The small block of Western insurgent Republicans in the House was also counted on to do its bit in a tight place.

But this soon proved to be an erroneous prediction. To meet the situation in the Senate, a counter-coalition was formed between old guard Republicans and Democrats which broke up the bid of the insurgent element in both parties for the balance of power.

In the House the Democrats organized and began working smoothly. Their harmony continued throughout the passage of the bill for a moratorium on foreign debts, the bill to change the administrative features of the tariff laws, the bill creating the Reconstruction Finance Corporation and the bill to so amend the Federal Reserve law as to enable the Federal reserve system to come to the aid of the small banks of the country.

As these measures were being prepared, debated and voted on, the Democratic majority, narrow as it was, proved effective in the House, while in the Senate the combination of regular Republicans and regular Democrats had the power to carry out the program.

This fairly harmonious condition lasted through December, January and February. Of course there were clashes here and there, but in the main the legislative machinery functioned with reasonable smoothness.

The Democratic leaders in the House, particularly, were receiving praise for the manner in which they were conducting their affairs.

And then, all of a sudden, came the upset.

It did not come, as had been predicted, through the skillful maneuvering of the insurgent Republican group, although that group lent its aid, but through a sudden, unaccountable and uncontrollable defection in the ranks of the House Democrats over the revenue bill. After the Ways and Means Committee had been informed by the Secretary of the Treasury of the extent of the deficit in the Federal Treasury and had been given an estimate as to the amount of money that must be raised to meet the expenses of the coming year, it set to work to draft a revenue bill.

The outcome of its deliberations was a raise in income taxes and the addition of a manufacturers' excise tax to the list of taxes already on the statute books.

The manufacturers' excise tax or "sales tax" turned out to be the spark necessary to start the conflagration among House members. To begin with, the Democratic leaders were not a unit on this tax. They brought it forward in an effort to avoid being accused of indulging in a "soak the rich" program.

Among the rank and file of the Democrats in the House, however, was a large element who had no objection to soaking the rich. In fact, they would stand better with their constituents if they did vote to soak the rich.

Among them was Representative John E. Rankin of Mississippi. No sooner had the revenue bill been reported with its sales tax and its absence of crushing taxes on the wealthy, than Mr. Rankin started a fight against it.

In his fight he was promptly joined by Representative Fiorella La Guardia of New York, a Republican insurgent.

Representative Rankin quickly drew to his support a surprising number of Democrats, while Mr. La Guardia was followed by almost all of the insurgent Republicans and a few other Republicans not usually classed as insurgents.

The net result was that the sales tax provisions were stricken from the bill on the plea that they were taxes on the poor and the bill was sent back to committee.

Upon the defeat of the sales tax, Representative Charles R. Crisp of Georgia, ranking Democrat on the Ways and Means Committee, who had been acting chairman in the absence of Representative James W. Collier of Mississippi, who was kept away by illness during the entire consideration of the revenue bill, offered to step aside and let Mr. Rankin take charge of the writing of a new tax bill. This offer Mr. Rankin promptly and firmly declined.

The veteran Illinois Democrat, Representative Henry T. Rainey, a member of the Ways and Means Committee, humorously remarked afterward that the sales tax lost on account of an error in strategy by the committee.

"If we had brought out a bill with high income tax rates it would have been beaten," said Mr. Rainey. "We could then have substituted the sales tax and the House would have passed it."

By that as it may, the sales tax provision was the rock on which the Democratic control was wrecked.

So unanimous was the public criticism of the House for its handling of the tax bill that it quickly sobered and passed an amended bill.

In the meantime, however, other problems were piling up. The propagandists of various kinds were swinging into action and Congress was flooded with written and spoken appeals.

Most of the trouble over the revenue bill in the House had been caused by the younger members, those who were serving their first or second terms and who had not had several years of experience back of them to steady them in political crises.

But soon the bombardment of Congress became so heavy from the outside that even the battle-scarred veterans began to feel a touch of the panic.

Men who have served in the Senate and the House for years are on record as saying that never in their experience has their mail been so heavy as it has been during this sesson. If they wanted to have a breathing spell their only chance was to remain away from their offices for a day or so, for if they entered their offices it was a foregone conclusion that they would find a pile of letters and telegrams awaiting them.

One opinion is that the use of the radio in broadcasting political news from Washington has increased the interest of the public in Congressional affairs. Whatever the cause, the interest has undoubtedly increased, as is proven by the volume of the corespondence.

Much of this correspondence is, of course, "cooked up" propaganda. An organization already in existence desires certain legislation, or an organization is suddenly formed to press certain legislation. The result is that a uniform

letter is prepared and sent to members of the organization. They sign a copy and send it in individually.

Members of Congress are informed on this scheme and can tell at a glance, when they receive one of these letters, that it is part of an organized plan. They have learned to estimate its value in the representation or non representation of actual public sentiment and to deal with it accordingly.

In addition to this type of correspondence, however, is the correspondence from bona fide, individual voters, each expressing his own views in his own way. And this is the correspondence that has grown so heavy of late.

Half the writers of these letters urge the Congressman to vote for this or that appropriation for the relief of this or that class. The other half urge the Congressman to stop voting for raids on the Federal Treasury; to vote to cut down the cost of Government, even if it means reducing Government salaries and dismissing Government employes.

In the midst of all this barrage of suggestion, the sincere member of the Senate or House who is willing to risk his own political future for the sake of doing what he considers the best thing for the interest of his country as a whole is frequently in an actual quandary.

On the political side, there has been a lack of party cohesion on many fundamental matters.

Among the Democrats there have been two camps, the one favoring the nomination of Governor Franklin D. Roosevelt of New York and the other opposing his nomination. This is a sort of conservative and radical division. Those favoring increased Government activity in national affairs incline toward Roosevelt while those with the opposite view are not friendly toward him.

In the Republican ranks are those who hold no great affection for President Hoover and go along with him simply because he is the Republican President. This applies not only to the western progressive Republicans, all of whom are openly hostile to the Persident, but to an appreciable number in the ranks of the regular Republicans.

These differences within the ranks of the two major parties have not appeared on the surface to any great extent but they have operated effectively beneath the surface and have had a hidden bearing on much that has gone on in Congress during the past six months.

Because of all these complications, the political wiseacres about the Capitol are predicting that there will be an unusual replacement of Members of the House in the coming elections.

They base this prediction partly on the upset conditions prevailing generally within the ranks of both parties but more particularly on what they term a general, nationwide grudge against Congress.

The general result of the coming elections, they feel, will be the same with Congress as with the Presidency. That is to say, if a Republican President is elected, the House is more than apt to be Republican, also.

But where they look for most of the upsets—and their predictions are being verified in many of the cases up to date—in the primaries. They say it is an open season for the "ins" and that the voters are going to make it hot for Congressmen seeking reelection.

Waves of this sort come along in politics every once in awhile. The voters, owing to conditions over which their representatives in Congress may or may not have any control, suddenly make up their minds to a change. The experienced politicians declare that this is one of those times.

The prohibition question is receiving the attention accorded it largely on account of upset conditions. The fight over this question is expected to be bitter in both the Democratic and Republican National Convention.

Since the shortest way to amend the Constitution of the United States is by an amendment resolution passed by Congress on a two-thirds vote, the fight over the question of retaining the Eighteenth Amendment intact or amending it (since it cannot be repealed), will be conducted on the election of Senators and Representatives.

With the voters of the two parties still divided on this question, no matter what the National Conventions may do, it is easy to see how uncertain the outcome will be.

In addition to this are the questions of taxation, soldier bonus, farm relief, the cutting of Government expenses and dozens of other "issues" that lend doubt as to what may happen in any Congressional district.

From all this it may readily be seen that the chaotic conditions that have occasionally prevailed on Capitol Hill in recent months are not to be wondered at.

Congress has passed much good legislation. It has also stopped some bad legislation. Its record, while apparently one of confusion, has been far from bad when all the circumstances under which it has been laboring are taken into account.

Agriculture

As the DIGEST goes to press a final effort is being made by Senators and Representatives from agricultural states to put through some form of farm relief legislation. No definite program has been concentrated upon, with the possible exception of the McNary bill referred to below. Conferences are being held, however, but the final outcome cannot be predicted.

Following is the status of important agricultural measures as of June 6.

Futures trading, S. J. Res. 108, by Senator Capper, Kans., R., authorizing the Secretary of Agriculture to investigate the cost of maintaining the present system of future trading in agricultural products and ascertain who bears the cost, was passed by the Senate on April 18 and was referred to the House Committee on Agriculture.

S. 4536, by Senator McNary, Oreg., R., the composite farm relief bill, was reported to the Senate on April 29. This measure, which has the backing of all the leading farm organizations, grants additional authority to the Federal Farm Board under which the Board would be empowered to use the equalization fee, the debenture plan and the domestic allotment plan or all these plans when ever it finds certain conditions exist, namely:

H. R. 11866, by Representative Fulmer, Ark., D., identical with S. 4536 is under consideration by the House committee on Agriculture.

S. J. Res. 149, by Senator Shipstead, Minn., F. L., to make Department of Agriculture funds available for grasshopper control passed the Senate April 29 and is before the House Committee on Appropriations. An effort to pass the Senate bill in the House under suspension of the rules was defeated on May 16. The bill was reported to the House by the Committee on May 7, with amendments, and re-referred to the Appropriation's Committee.

H. R. 10158, by Representative Jones, Texas, Dem., to limit short selling on grain and cotton exchanges was ordered favorably reported by the House Committee on Agriculture on May 18.

Anti-Injunctions in Labor Disputes

THE Norris-LaGuardia bill to curb the use of injunctions in labor disputes was passed by the Senate on March 1 by a vote of 75 to 5 and by the House on March 8 by a vote of 363 to 13. It was sent to conference on March 9; reported from conference and passed on March 18. It was signed by the President on March 23.

The bill, now a law, declares the right of labor to organize and to bargain collectively. It makes unlawful so-called "yellow-dog" contracts which prohibit employees from joining unions, and, except where overt acts as set forth in the bill are committed, forbids issuance of injunctions without a full hearing and finding of fact, and grants to persons charged with contempt of court for violating an injunction, the right to trial by jury under another judge.

Appropriations

AS the DIGEST goes to press, but two of the eleven annual supply bills have been passed and signed by the President—the First Deficiency bill and the Interior Department bill.

The First Deficiency bill, which contained appropriations to make up deficiencies that had occurred since the former session of Congress, was passed and signed by the President on February 2. The Interior Department bill was signed on April 22.

All the other appropriation bills, with the exception of the Second Deficiency bill, which is always held back until the closing days of the session to take care of various odds and ends, have passed the House. Only one, however, had been reported to the Senate on June 7—the Departments of State, Justice, Commerce and Labor bill, which had been in conference since May 6.

The rest, containing the appropriations for the Departments of the Treasury, Post Office, Navy, and War, and the Independent Offices, the District of Columbia, and the Legislative bill, which covers the expenses of Congress, were all being held up in the Senate Committee on appropriations pending action on the Economy bill. The reason for this is that the Economy Bill contains provisions for pay cuts and reorganizations in the various Federal departments. Until Congress decides what policy to pursue on this subject it cannot pass the departmental appropriation bills, since the amount of money to be allotted to each department is contingent upon the economy program.

Banking

THE following progress has been made on the Administration's program for financial legislation:

Moratorium—(H. J. Res. 147), approved December 23, 1931.

Reconstruction Finance Corporation—(H. R. 7360), approved January 22, 1932.

Federal Land Bank Loans—(H. R. 6172), approved January 23.

Federal Reserve System Extension—(H. R. 2093), approved February 27.

On January 21 Senator Carter Glass, Va., D., introduced a bill for the general revision of the banking laws, including provisions for broadening the base of the Federal Reserve loan system. These features, however, were taken out of the Glass general revision bill and incorporated in the Seagall-Glass bill, H. R. 9203, which was passed by both Houses and approved February 27.

Senator Glass withdrew his original general revision bill for further consideration by a subcommittee of the Senate Committee on Banking and Currency, of which subcommittee Mr. Glass is chairman. It was agreed upon and reintroduced in revised form by Senator Glass on March 17.

This bill, S. 4115, provides for restriction in the use of Federal Reserve assets to prevent diversion of funds for speculative purposes; sets up a system of branch banking by national banks; provides for prompter payment of depositors in closed banks; raises to $100,000 the amount of capital a bank must have to obtain a National Charter, and empowers the Comptroller of the Currency, the governor of the Federal Reserve Board and the district Federal Reserve Agent interested, to act as a Board to revoke the charter of a bank whose officials are guilty of illicit and irregular actions in the conduct of the bank's affairs.

The bill contains other technical changes in existing banking laws, when the bill is reported to full committee on Banking and Currency it will be given prompt consideration by the Senate. As some of its provisions are highly controversial a full debate is expected. It is not expected to begin full consideration on the floor of the Senate at this session.

On May 25 the House Committee on Banking and Currency reported H. R. 12280, by Representative Reilly, Wisconsin, Democrat, providing for the establishment of home loan banks. A special rule has been issued for this bill and it is expected to pass the House before the close of the session.

The home loan bank plan was one of the features of the Administration's general economic reconstruction program. The Reilly bill is expected to pass the House at this session. Bills for the same purpose, introduced by Senators Watson, Indiana, Republican, and Bulkley, Democrat, Ohio, are pending before the Senate Committee on Banking and Currency.

On May 27 the House passed the Steagall bill, H. R. 11362, providing for guaranty of bank deposits.

On June 6, after a week-end visit by the President and the leading finance advisers of the Administration to the President's summer camp at Rapidan, Va., the following statement on the results of the general financial legislation passed at this sesson of Congress was issued at the White House:

The text of the White House statement after President Hoover's conferences at his Rapidan camp dealing with the relief question follows:

"The following are the conclusions of the Rapidan conference between President Hoover and the directors, Gov. Meyer (of the Federal Reserve Board), Gen. Dawes, Messrs. Jones, Couch, McCarthy, Bestor and Ballantine of the Reconstruction Finance Corporation.

"They spent some hours yesterday and this morning reviewing the work which has been accomplished since the corporation was established on the 2d of February and discussed the board's plans and recommendations for the future. They also discussed methods further to co-ordinate all economic agencies engaged in assistance to business, employment and agriculture.

"The review of the work of the corporation showed that in the 14 weeks of its life loans of about $500,000,000 were authorized to something like 4,000 banks, agricultural credit corporations, life insurance companies and other financial institutions, and in addition thereto about $170,000,000 to railroads.

"An analysis of the institutions and the purposes served showed that:

"First. Of nearly 3,000 borrowing banks, more than 70 percent are located in towns of 5,000 in population or less; while 84 per cent are located in towns of 25,000 in population or less; and that only 4.5 per cent of money loaned to banks has gone to institutions in cities of over one million in population.

"In all these communities these banks have been able to meet the demands of their depositors and to minimize the necessity of forced collections, foreclosures and sales of securities and have thus contributed to protect community values. One hundred and twenty-five closed banks have either been reopened or their depositors paid out. And bank failures which amounted to nearly 100 a week when the corporation began are now down to about the casualties of normal times. It is estimated that altogether over 10 million individual depositors and borrowers have been benefited by the margins provided by the Reconstruction Finance Corporation to these banks.

"Second: Over 250 building and loan associations have borrowed from the corporation in order to enable them on the one hand to make their routine payments to their depositors and participants, and on the other to avoid the foreclosures of mortgages. The result again has been benefits to hundreds of thousands of individuals.

"Third: In the agricultural field, the corporation has underwritten or subscribed for issues placing $68,000,000 of the Federal intermediate credit bank debentures, the whole of which sums are loaned directly to farmers for production and marketing purposes. Loans have been made to a number of agricultural, market and live stock finance corporations, which in turn has enabled them to extend and continue loans particularly upon live stock and loans to a great number of farmers. Beyond this, loans to the extent of $75,000,000 have been made directly to about 450,000 farmers for seed purposes through the Department of Agriculture. Altogether probably one million individual farmers have been directly or indirectly helped.

"Fourth, the net result of approximately $170,000,000 authorized loans to railroads has been on one hand to increase employment by continuing necessary construction work, and on the other hand by preventing receiverships and thus safeguarding the great investments of the trustee institutions such as insurance companies, savings banks, etc. The deterioration of service and other standards which accompany receiverships have also been avoided.

"Generally about $670,000,000 of loans authorized to date have filtered through to the use and protection of a very large segment of the whole country. An encouraging feature is that the repayment of loans has begun, some $30,000,000 having been repaid.

"The conference conclusions as to immediate policies necessary to speedy economic recovery embrace four principal items affecting the Reconstruction Corporation.

"1. In order at once to stimulate employment and to stiffen the whole agricultural situation, to extend the authority to the Reconstruction Finance Corporation to increase its issues of its securities to the maximum of $3,000,000,000 to enable it (a) to buy bonds from political subdivisions or public bodies or corporations so as to start construction of income-producing or self-liquidating projects which will at once increase employment, (b) to make loans upon security of agricultural commodities so as to assure the carrying of normal stocks of these commodities and thus by stabilizing their loan value and thereby at once steady their price levels, (c) to make loans to the Federal Farm Board to enable extension of loans to farm co-operatives and loans for export of agricultural commodities to quarters unable otherwise to purchase them, (d) the authority to loan up to $300,000,000 to such States as are unable to finance themselves for distress.

"It was considered desirable that temporary non-partisan committees should be set up to pass upon loans to States for distress and of engineers to pass upon loans for income producing works. Both of these committees to function in much the same way as the Interstate Commerce Commission now acts in passing upon loans to railroads.

"2. The enactment of the legislation which has been recommended creating the system of home loan discount banks. Surveys by the building and loan associations and the Department of Commerce show that these institutions would not only protect great numbers of homes from foreclosures, but that they would immediately stimulate from five hundred million to a billion dollars of construction work in new homes in many under-built localities and in renovations. It was considered that these institutions were a necessary complement to the Renconstruction Corporation and could well be financed by the corporation from its funds if the legislation creating that system is enacted.

"3. The Joint Committee of Industry and Finance now being created by the Federal Reserve System in each district for the purpose of organized application of the credit facilities now available through the system to be developed in other cities and co-ordinated with the work of the Reconstruction Corporation.

"4. That Government expenditures must be held down absolutely to within the tax income now provided and that no programs of expenditures should be undertaken which cannot be paid for from current tax income. Expansion of non-productive public works requiring the issuance of Government securities for any other lines of expenditures would at once create a deficit and again unbalance the budget and would render financing of the operations of the Reconstruction Corporation extremely difficult, if not impossible, and would increase rather than decrease unemployment.

"The board presented to the President a high tribute to the thousands of members of committees and of the staff of the Reconstruction Finance Corporation, working in every city and located in every part of the Union, who have given their undivided time and service to enabling the corporation to function on such an enormous scale and so effectively in the short period of less than three months."

Copyright

EXTENDED hearings on copyright legislation have been held during the session by the House Committee on Patents and on May 18 the Committee reported 12094 by Representative Sirovich, New York, Democrat, chairman of the Committee. On May 24, the bill was recommitteed. On June 3 Representative Sirovich introduced a new bill, H. R. 12425, which was not expected to be reported before next session.

Copyright bills are also before the Senate Committee on Patents, but they are being held to await action by the House.

Economy Program

ON June 6, the two houses of Congress were considering separate measures bearing on the governmental economy policy. The Senate was considering the economy program as originally passed by the House, while the House was considering the Garner relief bill. The House economy bill, worked out by the special committee of the House and passed by the House on May 3, as part of the Legislative Appropriation bill. By this bill it is estimated that there will be a saving of $238,605,000 in government expenditures during the fiscal year from July 1, 1932 to June 30, 1933.

The bill as passed by the House did not provide for cuts in the pay of Federal employes. On June 4 the Senate voted a 10 per cent cut of all salaries save those under $1000 a year. Efforts will be made in the Senate, however, before the bill comes to final passage, to substitate for the 10 per cent pay cut plan, the plan originally approved by President Hoover, to furlough each government employe for one month without pay, leaving each employe to draw pay for eleven months at no change in monthly rate.

In other words, instead of losing one-tenth of his pay for the year, the employe would be laid off a month and lose one-twelfth of his annual pay.

The House, on June 7, will begin consideration of the plan offered by Speaker John N. Garner in H. R. 12445, "to relieve destitution, to broaden the lending power of the Reconstruction Finance Corporation."

Foreign Debts

SINCE the passage of the legislation necessary for America's approval of the one-year's moratorium on foreign debts, this question has not come before Congress.

If an effort is made at the expiration of the current year to obtain an extension of the moratorium, Congress will again be called upon to pass upon the problem.

Immigration

HR. 10602, by Representative Moore, Kentucky, Democrat, providing for a 10 per cent reduction in the size of all immigration quotas, was reported to the House Committee on Immigration and Naturalization on April 7. Mr. Moore filed a request with the Committee on Rules for a special rule for consideration of the bill, but the matter was held up by the Democratic leaders on account of the controversial nature of the measure. The principal opposition comes from Representatives representing districts with heavy foreign-born population. They argue that since immigration has fallen off in the past two years more than 10 per cent below the quota limitations there is no need to pass the bill on the eve of election and embarrass Representatives with foreign-born constituencies. It is expected that the bill will be taken up by the House next session.

H. R. 6477, by Representative Dickstein, extending the time for naturalization of aliens who served with the American forces during the World War, was passed by both Houses and signed by the President on May 25.

The bill introduced by Representative Martin Dies, Democrat, Texas, to place alien communists in the same category as alien anarchists under the deportation laws was passed by the House on June 6.

Other minor immigration measures are on the calendars of both houses awaiting action.

Kidnapping

Bills making kidnapping a Federal offense have been reported from the Committee on the Judiciary in both houses of Congress. The House has before it the Cochran bill and the Senate has before it the Patterson bill. The two bills differ in several features and are not expected to be finally disposed of at this session.

"Lame Duck" Amendment

AFTER a nine-year battle in Congress, the Norris constitutional amendment, abolishing the so-called "lame duck" session of Congress, and changing the beginning of the President's term of office, etc., has received the approval of Congress. On March 2 the House adopted the conference report on the measure, S. J. Res. 114, which was approved by the Senate the following day.

A Congressional joint resolution providing for an amendment to the Constitution does not require the signature of the President to become effective. In fact, under the Constitution the Executive branch of the Government does not participate in the procedure for amendment. Congress, however, submits a resolution for an amendment to the state legislatures through the Secretary of State. Notice of the passage by Congress of the "lame duck" resolution was sent by the State Department to the State legislatures, which as they ratify or reject it, will inform the Secretary of State who, in turn will inform Congress.

This is the first constitutional amendment adopted by Congress since the child labor proposal eight years ago. Like that proposal, which failed of ratification, this proposal must be ratified by 36 states within seven years to become valid.

Outstanding among the measure's provisions is elimination of the "short session" of Congress extending from the first Monday in December until March 2, and the establishment of sessions of indeterminate length to begin each January 3.

Under the amendment members would take up their duties on January 3, two months after their election, instead of waiting thirteen months until the following

December, making possible almost continuous sessions of Congress.

Terms of the President and Vice-President would begin on January 20, instead of March 4.

On June 1, the legislatures of ten states had ratified the "lame duck" amendment. They were:

Virginia, March 4; New York, March 11; Mississippi, March 16; New Jersey, March 21; Arkansas, March 22; South Carolina, March 26; Kentucky, March 30; Maine, April 1; Michigan, April 2; Rhode Island, April 14. Total 10.

The Massachusetts legislature submitted the question of ratification to the voters on a referendum to be voted on at the regular elections of November, 1932.

Maternity and Infancy

On January 18, the House Committee on Interstate and Foreign Commerce reported H. R. 7525, by Representative Bankhead, Alabama, Democrat, to revive the maternity and infancy appropriations which went out of existence in 1929 with the lapse of the Shepperd-Towner Act.

On March 15, the Senate Committee on Commerce reported S. 572, by Senator Jones, Washington, Republican, for the same purpose.

The benefits of these measures, which would apply to urban as well as rural communities, call for appropriations of $500,000 for the first year and $1,000,000 a year for each year thereafter to be distributed among the states with the requirement that they match the funds and use them in cooperation with the Children's Bureau of the U.S. Department of Labor in maternity and infancy health activities.

Minority reports were made in each instance opposing the proposed legislation and each bill has remained on the calendar of its house since being reported. Owing to the cost involved, no effort has been made in either house to press for consideration.

Motor Buses

The Motor Bus bill, S. 2793, by Senator Couzens, Michigan, Republican, has been before the Senate Committee on Interstate Commerce since early in the session. Full hearings have been held but it is not expected that an attempt to give the measure consideration will be attempted until early next session.

Muscle Shoals

On March 9, the Senate Committee on Agriculture, by unanimous vote, favorably reported to the Senate the Norris Muscle Shoals resolution, S. J. Res. 15, identical to the one which President Hoover vetoed at the last session of Congress.

The measure provides for Government operation of the $150,000,000 power and nitrate plants at Muscle Shoals, on the Tennessee River, unless President Hoover is able to negotiate a lease for the nitrate plants within a year.

It also provides for Government manufacture of power at Muscle Shoals and construction by the Government of transmission lines for its distribution with preference to States, counties and municipalities.

The committee, in reporting the bill, put aside a measure introduced by Senator Kean (Republican), New Jersey, to carry out the recommendations of the commission appointed by President Hoover and the Governors of Tennessee and Alabama for operation of the Shoals by a farmer-controlled organization.

On April 4 a new Muscle Shoals bill, H. R. 11051, introduced by Representative Hill, Ala., D., differing from the Norris plan pending in the Senate, but containing a Government-operation alternate to private operation, was reported by the House Military Affairs Committee and is on the House calendar.

The Hill bill was passed by the House on May 5, and upon reaching the Senate was referred to the Committee on Agriculture.

The Norris resolution, as the DIGEST goes to press, is still on the Senate calendar awaiting action. It was not expected to be voted on at this session. The indications are that the Senate will pass the Norris resolution next session and that the differences between the House and Senate measures will be ironed out in conference.

Philippine Independence

On the Senate calendar are the Senate Philippine Independence bill, introduced jointly by Senators Hawes, Missouri, Democrat, and Cutting, New Mexico, Republican, and the House bill introduced by Representative Hare, South Carolina, Democrat. The Hare bill passed the House by an overwhelming majority. There are differences between the two bills, but the Senate Committee on Territories and Insular Affairs reported the House bill intact with a view to reconciling the differences between the two measures on the floor of the Senate.

Passage of a bill acceptable to both houses at this session is possible but not probable. If passed it will be vetoed by President Hoover.

Prohibition

The first prohibition test came in the Senate on January 21 when the Senate by a vote of 55 to 15 defeated a resolution offered by Senator Hiram Bingham, Conn., R., asking governors to hold referenda in their respective States to determine prohibition and anti-prohibition sentiment, while the "wets" maintain that this vote was not a fair test of "wet" and "dry" sentiment in the Senate, an estimate based on the vote show that to obtain consideration of a Constitutional amendment in the Senate the "wets" need 34 more votes for the necessary majority of 49, and 49 more votes for the 64, or two-thirds vote necessary for passage of such a resolution.

On the Senate vote, 8 Republicans voted for the Bingham resolution and 26 voted against it. While 7 Democrats voted for it and 28 voted against it. The one Farmer-Labor Senator voted against it.

The one Farmer-Labor member voted for the resolution. Thus the "drys" had a majority of 15 within the Republican ranks and a majority of 24 within the Democratic ranks.

The second record vote of the session on the direct question of prohibition was taken on March 14 when the

House voted on the resolution authored jointly by Representatives J. C. Linthicum, Md., D., and James M. Beck, Pa., R., proposing an amendment to the Eighteenth Amendment to the Constitution, which, in effect would give each State control of the sale of liquor within its borders. On February 16 the House Committee on the Judiciary, to which the resolution had been referred, rejected a motion to report it by a vote of 14 to 9.

Following this action, Representative Linthicum began circulating a petition, under the new House rules, to discharge the committee from consideration of the bill. One-third of the membership of the House must sign such a petition. Mr. Linthicum obtained 145 signers, the requisite one-third, and on March 14 presented his petition to the House and called for a vote. The question voted on was whether the House should take up for consideration the Linthicum-Beck resolution which the committee had refused to report. On the roll call 187 voted to consider the resolution and 227 voted against its consideration, showing a majority of 40 votes. There are two vacancies in the House, but assuming the full membership of 435 present, this means that the "wets" must gain 31 more members in order to muster a majority of the House, which is 218.

A majority would enable them to force consideration of a resolution to amend the Constitution, but in order to pass it they must increase their present strength of 187 votes by 103 additional votes to reach the necessary two-thirds strength of 290.

On the vote on the Linthicum-Beck resolution in the House 97 Republicans voted for and 112 voted against, while 90 Democrats voted for and 114 voted against.

Subsequent test votes showed the "drys" and "wets" maintaining the same relative strength.

On May 18, two amendments to the revenue bill for a tax on beer were voted on in the Senate. The Tydings amendment was defeated 61 to 24 and the Bingham amendment, 60 to 23.

On May 23 the House defeated the O'Connor-Hull beer tax bill by 228 to 169.

Railroads

Two railroad measures of importance were reported from the House Committee on Interstate and Foreign Commerce during the session but remained unacted upon by the House. They were H. R. 11643, amending Section 5 of the Interstate Commerce Act which covers consolidation and control of interstate carriers, and H. R. 11677, amending the Interstate Commerce Act as regards recapture, valuation, rates and holding companies. Both bills were introduced by Representative Rayburn, Texas, Democrat, Chairman of the Committee on Interstate and Foreign Commerce. H. R. 11677 was reported on May 7 and H. R. 11643, on May 18. No effort was made to bring either to a vote as they are both controversial and will be the subject of full debate.

Silver

After holding extensive hearings, the House Committee on Coinage, Weights and Measures, reported a resolution declaring the advisability of an international conference for the stabilization of silver but no action by the House is anticipated.

Soldier Bonus

Soldier bonus legislation is hanging in the balance in Congress as the Digest goes to press, with an even chance of being voted on in the House, but in exactly what form is uncertain.

Stock Market Speculation

On March 4 the Senate adopted S. Res. 84 for an investigation of the Senate Committee on Banking and Currency into the operations of the New York Stock Exchange with respect to the buying and selling of securities. The resolution was drafted by Senators Walcott, Conn., R., Steiwer, Oreg., R., and Bulkley, O., D., a subcommittee of the Committee on Banking and Currency. An appropriation of $50,000 was voted to defray the cost of the investigation which is being conducted by the full Committee on Banking and Currency.

On April 8 the committee adopted a resolution calling for the records of short sales on the stock market. On April 11 the committee began hearings, the first witness being Richard Whitney, president of the New York Stock Exchange.

Mr. Whitney, who at a subsequent hearing, produced written records of stock market speculation, was followed by other witnesses. Owing to the occupation of the Senate with the revenue, economy and other measures during the latter part of May, the committee hearings were suspended, but only after sensational testimony of stock market pools had been given.

The Committee resumed hearings on June 3 with John J. Raskob, chairman of the Democratic National Committee, as the principal witness concerning his participation in the Anaconda Copper pool of 1929.

At the opening of the hearings on June 3 Senator Carter Glass, Va., Dem., asked William A. Gray, Philadelphia attorney, whom the Committee engaged to assist in conducting the investigations, if he intended to call Democrats only or if he would call some Republicans. Mr. Gray replied that politics had not been considered in preparing the list of witnesses.

Tariff

The Tariff bill, changing the administrative features of the existing laws was passed by the House January 9, adversely reported by the Senate Committee on Finance and passed by the Senate, with amendments on April 1. On April 28 the House agreed to the Senate amendments and passed the bill. It was vetoed by the President on May 11, and on that day a motion in the House to pass the bill over the veto was defeated.

In his message accompanying the veto, the President gave four reasons for his disapproval of the measure. These were: (1) that the bill would create uncertainty as to its purpose and would serve to break down the protective tariff, which the President considers essential at this time; (2) the bill would practically destroy the "flexible" provisions of the present traiff law by taking out of the hands of the President and the Tariff Commission the power to raise or lower existing tariffs to rates to meet emergencies in foreign competition; (3) that the proposal in the bill for an international tariff conference

are against the traditional American policy that tariffs are solely a domestic question, and (4) that the bill further calls upon the President to negotiate reciprocal trade agreements with foreign nations which, the President stated, was against the established principle of American tariff policy of "uniform and equal treatment of all nations without preferences, concessions, or discriminations (with the sole exception of certain concessions to Cuba").

Taxes

On June 6 the President signed the Revenue bill of 1932, which is designed to produce $1,118,-000,000, thus finishing the most important and also the most controversial piece of business before the first session of the Seventy-second Congress, a few hours before the Senate had adopted the conference report on the bill, which the House had adopted on June 4.

Thus, just six months, to the day, after the President in his annual message to the Congress on December 6, 1931, had stated that increased taxes would be necessary to meet the cost of operating the Government, and thus balance the budget, a new tax measure was made into law.

The path of the tax bill through Congress was a rough one. On January 13, after the Secretary of the Treasury, in his annual report to the Congress on December 7, had presented figures showing that the ordinary expenditures of the Government were running in excess of the ordinary receipts for the first time in 10 years, the House Committee on Ways and Means began hearings which continued until February 5. During these hearings more than 100 witnesses were heard. For more than a month thereafter the committee met almost daily in executive session to frame the bill, which it reported to the House on March 8.

On March 10 debate began in the House, followed by voting on the bill section by section. It was at this point that the revolt against the Democratic leadership began and a combination of Democrats and Progressive Republicans, led by Representatives Rankin, Democrat of Mississippi, and La Guardia, Progressive Republican of New York, succeeded in voting out of the bill the original provision for a manufacturers' excise tax, generally referred to as the "sales tax." The bill practically re-written on the floor, was passed by the House on April 1.

On April 6 the Senate Committee on Finance, to which the bill was referred, began hearings. The major battle in the Senate committee was over the proposed inclusion in the bill of import taxes on oil, coal, copper and lumber, which amount virtually to tariff rates. On a close vote in committee, import taxes on these four items were written into the bill, which was finally reported to the Senate on May 9, after Ogden L. Mills, Secretary of the Treasury, had appeared before the Committee and urged it to speed action.

As soon as it was taken up by the Senate a struggle developed over the tariff items, but their supporters were in the majority and they remained in the bill.

On May 31 President Hoover went to the Capitol in person to urge upon the Senate the danger of further delay in action on the bill. In his address he stated that the administration would accept the manufacturers' excise tax if by so doing work on the bill could be expedited.

The Committee on Finance met immediately after the President's address and reported against the manufacturers' excise tax amendments that had been offered on the floor of the Senate, and these amendments were rejected.

On June 1 the bill was passed by the Senate, as amended, and on the same day was sent to conference. The conference committee reported the bill on June 3, the House conferees having agreed to all the Senate amendments except those affecting power rates.

The tax schedules contained in the bill are as follows:

Individual Income Tax Rates. Normal

Net income	Present	New
First $4,000	1½ per cent	4 per cent
$4,000 to $8,000	3 per cent	8 per cent
Above $8,000	5 per cent	8 per cent

Surtaxes

The new schedule begins at one per cent on income over $6,000 and graduates up to a maximum rate of 55 per cent on income in excess of $1,000,000.

The present surtax schedule begins at one per cent on income in excess of $10,000 and graduates to a maximum of 20 per cent on income over $100,000.

Exemptions

	Present	New
Married persons	$3,500	$2,500
Single persons	1,500	1,000
Each child	400	400

Earned Income Allowance

Present—25 per cent.

New—None.

Corporation Income Rates

Present—Twelve per cent.

New—Thirteen and three-fourths per cent; 14½ per cent for consolidated returns.

Inheritance Taxes

Present—Graduated scale from 1 per cent on estates in excess of $50,000 to maximum of 20 per cent on estates in excess of $10,000,000.

New—Scale begins at 1 per cent on net estates in excess of $10,000 and graduates to 45 per cent on estates over $10,000,000.

Gift Tax

Present—None.

New—Begins at three-fourths of 1 per cent on gifts of more than $10,000 and graduates to maximum of 33½ per cent over $10,000,000.

Import Taxes

Oil—One-half cent a gallon.

Coal—Two dollars a ton.

Copper—Four cents a pound.

Lumber—Three dollars per 1,000 feet.

New Manufacturers' Excise Taxes

Lubricating oil—Four cents a gallon.

Brewers' wort—Fifteen cents a gallon.

Malt syrup—Three cents a pound.

Grape concentrates—Twenty cents a gallon.

Toilet preparations—Ten per cent (tooth pastes, toilet soaps and dentifrices, 5 per cent).

Furs—Ten per cent (House language).

(*Continued on page 191*)

How Uncle Sam's Laws Are Made

Series by Norborne T. N. Robinson

The following article is the fifth of a series of consecutive articles in which all phases of House and Senate procedure will be described. The articles are being prepared with the aid of the leading parliamentary authorities at the Captial, including members of both the Senate and the House and officers of those two bodies.

SINCE the chairmanships of all important House and Senate standing committees go to members of the majority party, the choice of chairmen is always an important matter to the party leadership. Committee chairmen are expected, in the conduct of their duties, to consider the general party policy and to act in harmony with the party program.

It is the general rule in both the House and Senate that committee chairmanships are governed by the seniority rule. When a Representative or Senator is first elected to membership on a committee his name goes on the bottom of the list of members of his party on the committee. As those ahead of him depart from the committee either by not being reelected to Congress or by being transferred to another committee, he moves up until he reaches the top of the list by virtue of his continued service.

If his party is in control of the House of which he is a member and a vacancy occurs in the chairmanship of the committee he then, under normal conditions, succeeds to the chairmanship. The member of the majority party next in line to the chairman is known as the ranking majority member and the member at the head of the list of minority members is known as the ranking minority member.

If there is a change in party control of the House or Senate, the former ranking minority member becomes the ranking majority member and is considered entitled to the chairmanship.

Thus, when the Democrats took over control of the House at the beginning of the Seventy-second Congress in December, 1931, the ranking Democrats on the various standing committees of the House were looked upon as prospective chairmen.

It so happened, however, in that instance, that if the seniority rule had been rigidly adhered to nearly all the important chairmanships would have gone to men from Southern States. In recent years the Southern States have been in the habit of repeatedly reelecting their Representatives and Senators. This is partly due to the fact that most of these States are so solidly Democratic that a Democratic nomination is the equivalent of an election.

This naturally reduces a member's liability to defeat and results in a higher percentage of men with long periods of service than in States where the strength of the two parties is more evenly divided and where control fluctuates.

Confronted with a condition where one section of the country would dominate nearly all the important committees under the seniority rule, the Democratic leaders in the Seventy-second Congress refrained from a strict enforcement of the rule and in the interests of party harmony, gave some of the chairmanships to Northern and Western members.

On all important committees the majority party is supposed to elect members who will stand by the chairman on votes on all bills concerning which the party has a definite policy.

The successful operation of this arrangement is dependant, however, upon a safe margin of control in the House by the majority party. Under that condition the leaders, in making up the committee lists not only have a larger number of members of each committee to nominate, but they have stronger backing within their party ranks and can thus maintain control, even by discipline, if necessary. Should some of their members oppose the chairman of the committee to which he belongs, the leaders can agree upon some other man for his place and, with their safe majority to back them, put a resolution through the House to effect the desired change.

With a slender majority control, as the Democrats now have in the House and the Republicans have in the Senate a thorough, workable party control of committee is impossible. During the past two Congresses—the Seventy-first and the Seventieth, from 1927 to 1931—the Republicans had a sound, workable control in the House. It has been several years, however, since they have had such a control in the Senate. Combinations of Democrats and Western Progressive Republicans have frequently upset the plans of the regular Republicans in committee.

In times of effective party control, the chairman of a committee has a great deal of power. His wishes on all important measures have great weight. If the party leaders are back of a piece of legislation it is the chairman of the committee to which that legislation is referred whom they rely upon to see that it receives proper handling.

When the committee takes up the bills before it, the chairman is the one who arranges the program and decides the order in which the various bills shall be considered.

Under a good party organization, the majority of the party is back of the selected leaders. The leaders are back of the committee chairman and this gives the committee chairman power over the other members of his party who are on his committee.

A wise and experienced committee chairman is like a wise leader in any other field. He does not attempt to bulldoze his fellow committee members. Demanding support on party policy measures, he generally tries to help other majority members on his committee with their own pet legislation. Frequently he makes things easy for a minority member, also, for he never knows when a turn of the political wheel will force him over onto the minority side of the committee. On all strictly party measures

he is adamant and insists upon party loyalty from the majority members. But on other legislation he tries to keep his committee happy.

He grants all reasonable requests for hearings and parcels out the appointments to subcommittees so that everybody is taken care of. If his committee is one which reports a number of bills, he sees to it that each member of the majority is given a bill to report and handle on the floor. The big bills he reports and handles, himself, but during the debate he arranges for and has the support of his fellow majority members.

An amendment to the House Rules adopted at the beginning of the first session of the Seventy-second Congress has decidedly curtailed the power of committee chairmen as well as of the committees. This change in the rules provides that if, after a committee has had a bill before it for 30 legislative days and has not acted upon it, the bill may be brought out of committee and onto the floor of the House by a petition signed by one-third of the membership of the House, or 145 members. Under this rule the House, when, the bill is called up, votes on a motion to consider the bill.

If the vote is in the affirmative, the bill is then taken up, debated, and voted on. If the motion to consider the bill is defeated, the bill then goes back to the committee. The rule provides that if a given bill is once brought out of committee by petition and the motion on the floor to consider it is lost, it is not subject to another petition during that session of Congress, but must take its regular course in committee.

The first measure to be subject to this rule in the House in the Seventy-second Congress was the Beck-Linthicum Joint Resolution for an amendment to the Eighteenth Amendment.

This resolution was brought out of the Committee on the Judiciary by a petition signed by the required 145 members. When it was called up in the House the motion to consider it was defeated by a vote of 227 to 187.

The resolution was thus sent back to committee. Prior to the signing of the petition the committee had rejected, by a vote of 14 to 9, a motion to report the resolution.

Before this provision was adopted the only way to bring a bill to the floor in opposition to the wishes of a majority of the members of the committee was by a majority vote of the House on a direct motion to discharge. Occasionally this was done but not often.

Thus, at the present time the power of committee chairmen, in the House is curtailed by two causes: first, the change in the House rules which enables one-third of the House by petition to override, not only the wishes of a committee chairman but the position of the entire committee on a given piece of legislation; and second, by the close margin of party control in the House and the tendency to break down party lines, which leaves most committee chairmen uncertain of the solid support of their own party members of their committee.

(*Continued from page* 189)

Jewelry—Ten per cent (articles selling for less than $3 exempted).

Automobiles—Passenger chassis 3 per cent; trucks 2 per cent; parts and accessories 2 per cent.

Automobile tires—Two and one-fourth cents a pound.

Inner tubes—Four cents a pound.

Radios and phonographs—Five per cent.

Mechanical refrigerators—Five per cent.

Sporting goods and cameras—Five per cent (aerial cameras exempted).

Firearms and shells—Ten per cent.

Matches—Wooden, 2 cents per thousand; paper, ½ cent a thousand.

Candy—Two per cent.

Chewing gum—Two per cent.

Soft drinks—Cereal beverages, 1¼ cents a gallon; unfermented grape juice, 5 cents a gallon; unfermented fruit juices, 2 cents a gallon; still drinks, 2 cents a gallon; mineral waters, 2 cents a gallon when price is over 12½ cents a gallon; fountain syrups, 6 cents a gallon; carbonated gas, four cents a pound.

Gasoline—One cent a gallon, paid by refiner.

Electrical energy—Three per cent, paid by buyer of energy.

New miscellaneous taxes.

Telephones—Ten cents on calls of 50 cents to $1; 15 cents on $1 and $2, and 20 cents over $2.

Telegraphs—Five per cent on all messages.

Cable and radio dispatches—Ten cents on all messages.

Leased wire—Five per cent.

Admissions—Ten per cent on all tickets costing 41 cents and over.

Oil transported by pipe lines—Four per cent.

Safe deposit boxes—Ten per cent, paid by renters.

Bank checks—Two cents each.

Yachts and boats—Graduated license tax from $10 to $200.

Postal Rates

First class, 3 cents per ounce; second class, first and second zones, 2 cents; third, 3 cents; fourth, 5 cents; fifth, 6 cents; sixth, 7 cents; seventh, 9 cents, and eighth zone, 10 cents.

Stamp Taxes

Issues of bonds and capital stocks—Ten cents each $100 par value.

Transfers of stock—Four cents a share; 5 cents when selling price over $20 a share (includes stock loans).

Transfers of bonds—Four cents on each $100.

Conveyances—Fifty cents on deeds of $100 to $500; 50 cents for each $500 additional.

Produce, future deliveries—Five cents.

World Court

On June 8 the House Committee on Foreign Affairs voted to report the Linthicum resolution, H. J. Res. 378, providing for the payment of the ex-

penses by America of the American representatives on the World Court. Representative Linthicum, chairman of the committee, is engaged in writing the report.

During consideration of the resolution the committee voted down an amendment offered by Representative Hamilton Fish of New York which provided that the United States would not consent to be party to any international code of law which contains any inequalities based on sex.

This is the provision that the National Womens' Party and other feminist organizations have been trying to have the League of Nations adopt. The same amendment was offered to the World Court treaty when it was being considered this session by the Senate Committee on Foreign Relations, but was not included with the other reservations as reported.

It is hardly likely that Mr. Linthicum will attempt to bring his resolution up in the House at this session, but he will undoubtedly bring it up early in the next session, if possible.

The World Court Treaty now before the Senate is also likely to be held over until next session.

The Need for New Bankruptcy Legislation

(*Continued from page 169*)

mittees and organizations of business men and lawyers. Various reforms were advocated, some of them drastic and some less important, and many public criticisms of the administration of the law by court officials and attorneys were made. In 1929 a thorough investigation of bankruptcy administration in the southern district of New York was concluded before the district court by counsel representing the three bar associations of New York and Bronx Counties. At about the same time the Department of Commerce conducted a series of studies of the causes or bankruptcies, at first independently and later in coöperation with the Yale Law School, which extended the inquiry into the administrative field.—*Extracts, see 4, p. 192.*

Recent Changes in Foreign Bankruptcy Laws

(*Continued from page 167*)

particular, the "Creditoren Verein von 1870" at Vienna, the public utility of which is legally recognized, its costs being preferential claims. In Hungary, all compositions must be submitted to the "Landeskreditschutzverein von Ungarn." In Germany, many creditors' syndicates have recently formed the "Kartell Deutscher Gläubigerschutzverbände." In Denmark, the textile trade at the end of the 19th century, formed a creditors' organization. Several other trades subsequently united to form the "Creditors' Syndicate of 1905." This movement is developed highly in Denmark, the country of co-operative societies. In short, legislative bodies everywhere now revising the bankruptcy laws are faced by this new tendency of cooperation among creditors, to which the practical requirements of the business community have given rise. This is a tendency which must be taken into account and any amendments in existing laws ought to aim at facilitating rather than creating obstacles in the way of its development.—*Extracts, see 2, p. 192.*

This Month's Contributors

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Lloyd Garrison, Special assistant to the Attorney General, was recently appointed Dean of the Law School of the University of Wisconsin.

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Judge Max Isaac, Editor of the American Bankruptcy Review, New York, was for more than 30 years a referee in bankruptcy in Georgia.

The Judicial Conference is a conference of Justices of the Supreme Court of the United States and other Federal Judges, which meets on call of the Chief Justice of the United States to consider matters relating to Federal Judicial procedure.

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This Month's Sources

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